

1
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF ALABAMA
4 NORTHEASTERN DIVISION

5 JAMON T. BRIM, *
6 Plaintiff, * 10-CV-00369-IPJ
7 vs. * February 25, 2011
8 * Florence, Alabama
9 * 9:02 a.m.
10 MIDLAND CREDIT MANAGEMENT, *
11 INC., *
12 Defendant. *
13 *****

14
15 TRANSCRIPT OF JURY TRIAL
16 BEFORE THE HONORABLE INGE P. JOHNSON
17 UNITED STATES DISTRICT JUDGE

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VOLUME IV

FOR THE PLAINTIFF:

14 MR. LEONARD A. BENNETT, ESQ.
15 CONSUMER LITIGATION ASSOCIATES
16 12515 Warwick Blvd
17 Suite 100
18 Newport News, VA 23606
19 757-930-3660

20 MS. PENNY HAYS CAULEY, ESQ.
21 HAYS CAULEY
22 P O Box 509
23 Darlington, SC 29540
24 843-393-5200

25 MR. RONALD C. SYKSTUS, ESQ.
BOND, BOTES, SYKSTUS & LARSEN
415 Church Street
Suite 100
Huntsville, AL 35801
256-539-9899

CHERYL K. POWELL, CCR, RPR, FCRR
Federal Official Court Reporter
1729 Fifth Avenue, North
Birmingham, AL 35203
256-508-4050/wrd4wrdrpr@aol.com

1
2 FOR THE DEFENDANT:

3 MR. ERIC B. LANGLEY, ESQ.
4 BALCH & BINGHAM
5 1710 Sixth Avenue North
6 P O Box 306
7 Birmingham, AL 35201-0306
8 205-251-8100

9 MR. JASON B. TOMPKINS, ESQ.
10 BALCH & BINGHAM
11 1901 Sixth Avenue North
12 Suite 1500
13 Birmingham, AL 35203
14 205-251-8100
15
16
17
18
19
20
21
22
23
24
25

CHERYL K. POWELL, CCR, RPR, FCRR
Federal Official Court Reporter
1729 Fifth Avenue, North
Birmingham, AL 35203
256-508-4050/wrd4wrdpr@aol.com

P R O C E E D I N G S

(In open court. Jury not present.)

THE COURT: Good morning. Have a seat.

Let the record show this is CV-10-369, Jamon Brim versus Midland Credit Management, Inc. And all the lawyers and the parties are here. It's outside the presence and hearing of the jury. And it's February the 25th, 2011.

And have you decided whether or not you're going to call anymore witnesses?

MR. LANGLEY: Your Honor, the defense rests. And we would like to file in our motion for judgment as a matter of law at the close of defendant's case.

THE COURT: That's fine.

MR. BENNETT: We would object for the reasons previously stated.

THE COURT: To them filing it?

MR. BENNETT: No. No. To the motion.

THE COURT: Well, let me look at it. It might not be the same.

MR. BENNETT: Is it the same?

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1 MR. LANGLEY: It's actually not.
2 The only new argument that we make is we address
3 causation in more detail. And then on the other
4 issues, just adopt and incorporate our
09:03:00 5 previously-filed motion.

6 THE COURT: I have a copy of it.
7 And I have read it. And it is denied. I don't
8 think that comes as a surprise. Okay. That
9 means I'm fixing to read the jury charges to the
09:03:48 10 jury.

11 So would you like to put your exception on
12 the record before I charge the jury? Can you
13 remember what it was?

14 MR. BENNETT: I can remember that
15 I could -- neither one was sufficient that I
16 would, in good faith, file an appeal to the
17 Eleventh Circuit on, so I won't make an
18 objection. We asked for instructions. I don't
19 believe it's reversible for the Court not to give
09:04:14 20 them, though I certainly would prefer it.

21 THE COURT: You had at least one.

22 MR. LANGLEY: Your Honor, we have
23 two exceptions. And then I wanted to just raise
24 one issue for the Court's consideration.

09:04:22 25 Our first exception is to our requested

1 mitigation instruction, which we filed in last
2 night.

3 THE COURT: Do you have a copy --
4 a hard copy of that? Because I have not been on
09:04:32 5 the computer today. We had computer issues this
6 morning.

7 MS. CAULEY: Your Honor, we have
8 one.

9 MR. LANGLEY: It's verbatim the
09:04:42 10 instruction --

11 THE COURT: I just need it for the
12 record. I really do need to see it. I know you
13 gave it to me at the charge conference
14 yesterday -- you gave me what you were going to
09:04:52 15 ask for in the charge conference last night, but
16 I didn't keep it. I gave it back to you.

17 MR. LANGLEY: Understood.

18 THE COURT: Well, maybe I can just
19 get back in. Are you in your computer?

09:05:10 20 COURTROOM DEPUTY: Yes, ma'am.

21 THE COURT: Can you go to
22 CV-10-369 in CMECF -- oh. They have it.

23 MS. CAULEY: It just got put away.

24 THE COURT: Y'all, when was that
09:05:26 25 filed? This is gibberish --

1 MS. CAULEY: It sure is.

2 THE COURT: It doesn't show
3 anything. Look at this.

4 MR. LANGLEY: Well, we filed it at
09:05:34 5 about seven -- some time between 7:00 and 8:00
6 last night, I think.

7 THE COURT: That's weird.

8 COURTROOM DEPUTY: That is weird.

9 THE COURT: Anyway, it's
09:05:44 10 unreadable when it was filed. But anyway, it
11 says --

12 MR. TOMPKINS: We actually filed
13 it at 10:52 p.m. last night.

14 THE COURT: Okay. And I'm going
09:05:58 15 to deny that. And I think I told you that last
16 night. So let's see. --

17 MR. LANGLEY: We just have one
18 more exception, and it's on Page 9.

19 THE COURT: Okay.

09:06:10 20 MR. LANGLEY: And defendant takes
21 exception to including the definition of
22 investigation. So it would be the two sentences
23 in the second full paragraph on Page 9.

24 THE COURT: Okay. And that's
09:06:26 25 overruled.

1 MR. LANGLEY: And the one
2 housekeeping matter that we wanted to raise. I
3 don't know if this is an issue with my copy or if
4 I misunderstood the Court last night on Page 7 in
09:06:42 5 the final paragraph on the page, the second
6 sentence includes the language that was struck
7 from other portions by consent of the parties.
8 The language that says, the plaintiff claims that
9 the defendant willfully failed to follow
09:07:00 10 reasonable procedures to assure maximum possible
11 accuracy.

12 MR. BENNETT: I apologize. We
13 didn't catch that either, Your Honor.

14 THE COURT: On the third new
09:07:20 15 paragraph?

16 MR. LANGLEY: It's the last full
17 paragraph on Page 7 that begins with the
18 sentence, the plaintiff further claims that the
19 defendant willfully failed to comply with the
09:07:30 20 Fair Credit Reporting Act.

21 THE COURT: What was it that was
22 not struck?

23 MR. LANGLEY: The next sentence.

24 THE COURT: The plaintiff claims
09:07:38 25 the defendant failed to follow reasonable

1 procedures to ensure maximum possible accuracy of
2 the information contained in the report
3 concerning plaintiff? Yeah. We didn't strike
4 that, did we?

09:07:48 5 MR. BENNETT: Nobody asked you to
6 strike it, Judge.

7 THE COURT: No. What I can do is
8 mark it off in black -- instead of making 15 more
9 copies.

09:08:00 10 MR. BENNETT: Yes, Your Honor.

11 THE COURT: Mark it through with
12 black.

13 MR. LANGLEY: That's acceptable to
14 defendant.

09:08:10 15 THE COURT: Okay. Let me -- okay.
16 I'll do that.

17 MR. BENNETT: Judge, we could do
18 that, if the Court wants, while you're reading
19 the instructions.

09:08:22 20 THE COURT: We can do that while
21 y'all think about your jury argument. And also
22 Cheryl has typed these up. So you might want to
23 look at them.

24 MR. BENNETT: Yes, Judge. Thank
09:08:52 25 you.

1 (Short recess.)

2 MR. BENNETT: Your Honor, I had
3 asked for 45 minutes. And I've been not putting
4 the math together for having reserved for
09:17:38 5 rebuttal. Could the parties have an additional
6 ten minutes so it will be 55?

7 THE COURT: That's fine.

8 MR. BENNETT: I don't know if I
9 will use it --

09:17:48 10 THE COURT: You don't care, do
11 you?

12 MR. LANGLEY: I'm not going to
13 argue for 55 minutes.

14 MR. BENNETT: I probably won't
09:17:54 15 either.

16 THE COURT: You're the one who
17 said you were going to speak less than your
18 opening statement. Your opening was 35 minutes.
19 I timed it.

09:18:04 20 MR. BENNETT: It will be about
21 that.

22 (Short recess.)

23 (In open court. Jury present.)

24 THE COURT: Please be seated
09:21:54 25 everyone. Good morning.

1 Let the record show this is CV-10-369,
2 Jamon Brim versus Midland Credit Management, Inc.
3 Let the record show the parties are present. The
4 attorneys are present. The jury is present. I
09:22:12 5 trust you had a good night.

6 The defendant has rested. That means at
7 this time I'm going to read you the law that you
8 should apply to the facts as you find them to be.
9 And you should have a copy each. Is there one on
09:22:24 10 the seat for each person? That's yours. You can
11 either follow along or listen, or you can use it
12 to make notes. That's yours to take to the jury
13 room when you deliberate.

14 And if for some reason I start coughing,
09:22:38 15 you just have to bear with me. Don't continue
16 reading, though. I do have to read it to you on
17 the record. Okay?

18 Ladies and gentlemen of the jury, we have
19 now reached that point in the trial where it is
09:22:48 20 the Court's obligation to instruct you with
21 respect to the law that you should apply to the
22 facts as you find them to be. These various
23 principles of law should be understood in the
24 context of each other.

09:22:58 25 When a judge and a jury sit together as a

1 court of law, it is the duty of the judge to see
2 that the trial progresses in an orderly fashion,
3 to rule upon all legal matters that are
4 presented, to define the issues involved, and
09:23:12 5 instruct the jury as to the law applicable to the
6 particular case.

7 It will be your duty, as jurors, to follow
8 the law as so stated to you by the judge. You
9 will, therefore, render a verdict in accordance
09:23:22 10 with the facts as you determine them to be from
11 the evidence and the law as given to you by the
12 Court.

13 I charge you that any ruling, statement,
14 or expression that may have been made by me
09:23:38 15 during the course of this trial is not to be
16 considered by you as any effort on my part to
17 convey to you any feeling or opinion about the
18 facts in this case or the credibility of any
19 witness. I do not have any such opinion.

09:23:52 20 When a person files a lawsuit, the person
21 or entity sued has a right to file an answer.
22 The fact that a lawsuit is filed does not give
23 rise to an inference that the plaintiff is
24 entitled to recover. When a complaint and answer
09:24:10 25 have been filed, a dispute exists which then is

1 presented during a trial for your determination.

2 In this case, the plaintiff is Jamon T.
3 Brim. The defendant is Midland Credit
4 Management, Inc. They are the only parties to
09:24:24 5 this lawsuit.

6 The Court charges you that although the
7 defendant in this case is a corporation, you are
8 not to consider its status as a business in
9 deciding the merits of this case. The Court
09:24:38 10 charges you that for purposes of this case, the
11 defendant is entitled to the same consideration
12 as an individual such as the plaintiff.

13 A corporation may only act through natural
14 persons as its agents or employees, and, in
09:24:54 15 general, any agent or employee of a corporation
16 may bind the corporation by his or her acts and
17 declarations made while acting within the scope
18 of his or her duties as an employee of the
19 corporation.

09:25:06 20 In this case, the plaintiff has the burden
21 of proof; that is, the burden to establish by a
22 preponderance of the evidence that he is entitled
23 to recover.

24 To establish by a preponderance of the
09:25:26 25 evidence means to prove that something is more

1 likely so than not so. In other words, a
2 preponderance of the evidence in the case means
3 such evidence, as when considered and compared
4 with that opposed to it, has more convincing
09:25:44 5 force and produces, in your minds, belief that
6 what is sought to be proved is more likely true
7 than not.

8 If the evidence is so evenly balanced that
9 you are unable to say that the evidence on either
09:25:56 10 side of the issue is more convincing, your
11 finding on that issue must be against the
12 plaintiff.

13 The preponderance of the evidence burden
14 does not, of course, require proof to an absolute
09:26:10 15 certainty, since proof to an absolute certainty
16 is seldom possible in any case.

17 In determining whether any fact in issue
18 has been proved by a preponderance of the
19 evidence in the case, the jury may, unless
09:26:22 20 instructed otherwise, consider the testimony of
21 all the witnesses, regardless of who may have
22 called them, and all exhibits received into
23 evidence, regardless of who may have produced
24 them.

09:26:34 25 In this case, the plaintiff, Jamon T.

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1 Brim, claims that he was damaged by defendant,
2 Midland Credit Management Inc.'s, negligent or
3 willful violation of the Fair Credit Reporting
4 Act in 15 U.S. Code, Section 1681.

09:26:54 5 Specifically, the plaintiff asserts that
6 the defendant failed to investigate his dispute
7 in a reasonable fashions; that is, the
8 defendant's use of the automated batch interface
9 system was unreasonable and, therefore, a
09:27:06 10 violation of the plaintiff's rights under the
11 act.

12 The plaintiff claims that the defendant
13 negligently or willfully failed to comply with
14 the Fair Credit Reporting Act in failing to
09:27:16 15 review the information provided to defendant by
16 Experian, Equifax, and Transunion and in failing
17 to reasonably investigate his dispute; that is,
18 the plaintiff claims that the defendant's system
19 for reviewing a dispute was unreasonable.

09:27:32 20 The defendant denies that it negligently
21 or willfully violated any provision of the Fair
22 Credit Reporting Act. The defendant claims that
23 its procedures when it received notice of a
24 dispute from a consumer and/or consumer reporting
09:27:46 25 agency were reasonable, and it claims that the

1 procedures it employed in handling the disputes
2 stemming from Mr. Brim's purchase of his computer
3 from Dell were reasonable.

4 It is for you to determine whether the
09:27:58 5 defendant acted in a reasonable manner.

6 The relevant text of the Fair Credit
7 Reporting Act, which is found in 15 U.S. Code,
8 Section 1681s-2(b) states as follows: Duties of
9 furnishers of information upon notice of dispute,
09:28:18 10 One, in general, after receiving notice pursuant
11 to Section 1681i(a)(2) of this title of a dispute
12 with regard to the completeness or accuracy of
13 any information provided by a person to a
14 consumer reporting agency, the person shall, A,
09:28:40 15 conduct an investigation with respect to the
16 disputed information; B, review all relevant
17 information provided by the consumer reporting
18 agency pursuant to Section 1681i(a)(2) of the
19 this title; C, report the result of the
09:29:00 20 investigation to the consumer reporting agency;
21 D, if the investigation finds that the
22 information is incomplete or inaccurate, report
23 those results to all other consumer reporting
24 agencies to which the person furnished the
09:29:16 25 information and that compile and maintain files

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1 on consumers on a nationwide basis; and E, if an
2 item of information disputed by a consumer is
3 found to be inaccurate or incomplete and cannot
4 be verified after reinvestigation under Paragraph
09:29:34 5 (1), for purposes of reporting to a consumer
6 reporting agency only, as appropriate, based on
7 the results of the investigation promptly, (i),
8 modify that item of information, (ii), delete
9 that item of information, or (iii), permanently
09:29:56 10 block the reporting of that item of information.

11 I charge you that, for purposes of this
12 case, the plaintiff is a consumer entitled to the
13 protections and benefits of the Fair Credit
14 Reporting Act.

09:30:08 15 To prevail on his claim that the defendant
16 negligently failed to comply with the Fair Credit
17 Reporting Act, the plaintiff must establish each
18 of the elements of such a claim by a
19 preponderance of the evidence.

09:30:22 20 The first element requires proof of one or
21 more of the following: A, that the defendant
22 failed to conduct a reasonable investigation with
23 respect to the dispute of credit information; or,
24 B, that the defendant failed to review and
09:30:38 25 consider all relevant information provided by the

1 consumer reporting agencies; and, Two, that the
2 plaintiff was damaged by the alleged violation or
3 violations of the act; and Three, that the
4 negligence of the defendant, Midland Credit
09:30:56 5 Management, Inc., proximately caused the damage
6 suffered by the plaintiff.

7 Your verdict would be for the plaintiff if
8 you find that the defendant negligently violated
9 the act; that the plaintiff was injured; and that
09:31:10 10 defendant's negligent violation of the act was
11 the proximate cause of the plaintiff's injury.

12 Your verdict must be for the defendant if
13 you find that the plaintiff failed to establish
14 any one of these elements.

09:31:22 15 In this case, the parties have stipulated
16 to the facts read to you by the Court at the
17 beginning of this case. That means that you must
18 take these facts as proved. No further evidence
19 in this case is required to accept these facts as
09:31:40 20 true.

21 The term, "negligence," means the failure
22 to do something that a reasonably-prudent entity
23 would do or the doing of something that a
24 reasonably-prudent entity would not do under the
09:31:54 25 circumstances you find existed in this case. You

1 are to decide what a reasonably-prudent entity
2 would do or not do under the circumstances.

3 The term, "proximate cause," means that
4 there must be a causal connection between the
09:32:10 5 conduct of the defendant that the plaintiff
6 claims was negligent and the damage complained of
7 by the plaintiff is the natural, probable result
8 of that conduct.

9 The plaintiff further claims that the
09:32:24 10 defendant willfully failed to comply with the
11 Fair Credit Reporting Act. The plaintiff has the
12 burden of proving each of the following elements
13 of such a claim by a preponderance of the
14 evidence. One: That the defendant willfully
09:32:40 15 failed to comply with the Fair Credit Reporting
16 Act by, A, willfully failing to conduct a
17 reasonable investigation with respect to the
18 dispute of credit information or by willfully
19 failing to review and consider all relevant
09:32:56 20 information provided by the consumer reporting
21 agencies; and Two, that the plaintiff was damaged
22 by the alleged violation or violations of the
23 act; and Three, that the willful failure of
24 Midland Credit Management, Inc. to comply with
09:33:10 25 the act proximately caused the damage suffered by

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1 the plaintiff.

2 Your verdict will be for the plaintiff if
3 you find that the plaintiff proved that the
4 defendant willfully failed to comply with the
09:33:20 5 act; that the plaintiff was injured; and that
6 defendant's willful violation of the act was the
7 proximate cause of the plaintiff's injury.

8 Your verdict must be for the defendant if
9 you find that the plaintiff failed to establish
09:33:36 10 any one of these elements.

11 To prove a willful violation, a consumer
12 must prove that a consumer reporting agency
13 either knowingly or recklessly violated the
14 requirements of the act. To prove a reckless
09:33:54 15 violation, a consumer must establish that the
16 action of the agency is not only a violation
17 under a reasonable reading of the statute's terms
18 but shows that the company ran a risk of
19 violating the law substantially greater than the
09:34:08 20 risk associated with a reading that was merely
21 careless.

22 Now, I want to also tell you here that the
23 definition of proximate cause is, for purposes of
24 the plaintiff's claim of willful violation of the
09:34:26 25 act -- that definition that I gave you under the

1 explanation on the previous page with respect to
2 the plaintiff's claim for negligent violation of
3 the act, that term is defined the same way.

4 Defendant, Midland Credit Management,
09:34:40 5 Inc., was required to conduct a reasonable
6 investigation. Factors to be considered in
7 determining whether the defendant has conducted a
8 reasonable investigation include whether the
9 consumer; that is, Mr. Brim, alerted the
09:34:54 10 defendant that its information was unreliable and
11 whether the credit bureaus alerted the defendant
12 that Mr. Brim contested the debt in question.
13 You may also consider the cost of verifying the
14 accuracy of the information versus the harm of
09:35:08 15 reporting inaccurate information.

16 The standard for such an investigation is
17 what a reasonably-prudent entity would do under
18 the same or similar circumstances. Evaluating
19 the reasonableness of the defendant's actions
09:35:24 20 involves weighing the potential harm from
21 inaccuracy against the burden of safeguarding
22 against such inaccuracies.

23 An investigation is a detailed inquiry or
24 systematic examination. The plain meaning of,
09:35:38 25 quote, investigation, unquote, requires some

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1 degree of careful inquiry by a furnisher of
2 credit information.

3 The law requires that after receiving
4 notice of a consumer's dispute through a consumer
09:35:52 5 reporting agency, a creditor, such as the
6 defendant, may not furnish any information
7 relating to that consumer if the creditor knows
8 the information is inaccurate.

9 Damages to be recovered are limited to
09:36:04 10 those, if any, arising from a negligent or
11 willful failure to conduct a reasonable
12 investigation. If your verdict is for the
13 plaintiff on the claim of negligent
14 noncompliance, then you must determine the amount
09:36:18 15 of damages, if any, that reasonably, fairly, and
16 adequately compensate for the injury caused by
17 the defendant's violation of the law. If you
18 find that the defendant negligently violated the
19 Fair Credit Reporting Act, you may award
09:36:36 20 compensatory or actual damages as I will define
21 that term for you in a moment.

22 If you find that the defendant willfully
23 violated the act, damages recoverable are two
24 kinds. First, there are damages that are
09:36:48 25 actually suffered by reason of the alleged wrong.

1 If you find that the defendant willfully violated
2 the Fair Credit Reporting Act by failing to
3 follow reasonable procedures in its investigation
4 of the plaintiff's dispute, you must award the
09:37:02 5 plaintiff the actual damages that you find he
6 sustained as a result of this failure.

7 If you find that the plaintiff suffered no
8 actual damages or damages of less than \$100 as a
9 result of the willful violations, then you must
09:37:18 10 award statutory damages.

11 Statutory damages are those damages fixed
12 by law. I instruct you that, under the Fair
13 Credit Reporting Act, statutory damages
14 applicable to the facts of this case are no less
09:37:30 15 than \$100 but no more than \$1,000. These are
16 damages fixed by statute and are separate from
17 any actual damages.

18 As I have stated to you, you may only
19 award statutory damages if you find the plaintiff
09:37:46 20 to have suffered no actual damages or damages of
21 less than \$100.

22 Second, there are punitive damages, which
23 means damages over, above, and different from
24 actual damages. I will explain punitive damages
09:38:02 25 further in a moment.

1 In considering the issue of the
2 plaintiff's damages, you are instructed that you
3 should assess the amount you find to be justified
4 by a preponderance of the evidence as full, just,
09:38:14 5 and reasonable compensation for all of the
6 respective plaintiff's damages, no more and no
7 less.

8 Whether in regard to negligent or willful
9 violation of the act, compensatory, or actual
09:38:26 10 damages are intended as money compensation to the
11 party wronged to compensate him for the injury
12 and other damages that have been inflicted as the
13 result of or were caused by the wrong complained
14 of.

09:38:40 15 Compensatory or actual damages are allowed
16 and should be awarded where a party satisfied the
17 jury by a preponderance of the evidence that the
18 party has been injured or damaged by the wrongful
19 act or acts of the party charged.

09:38:54 20 The purpose of awarding compensatory
21 damages is to fairly and reasonably compensate
22 the injured party for the loss or injury actually
23 sustained. Compensatory damages are not allowed
24 as a punishment and must not be imposed or
09:39:08 25 increased to penalize the defendant.

1 Also, compensatory damages must not be
2 based on speculation or guesswork, because it is
3 only actual damages that are recoverable. Actual
4 damages include recovery for any out-of-pocket
09:39:22 5 expenses and damages for personal humiliation,
6 embarrassment, anguish, and emotional distress.

7 On the other hand, compensatory damages
8 are not restricted to actual loss of time or
9 money. They cover both the mental and physical
09:39:38 10 aspects of the injury, tangible and intangible.
11 Thus, no evidence of the value of such intangible
12 things as emotional and mental anguish has been
13 or need be introduced.

14 In that respect, it is not value you are
09:39:52 15 trying to determine but an amount that will
16 fairly compensate the plaintiff for those claims
17 of damage. There is no exact standard to be
18 applied. Any such award should be fair and just
19 in the light of the evidence. This element of
09:40:12 20 damages is left to your good sound judgment and
21 discretion as to what amount would reasonably and
22 fairly compensate the plaintiff for such
23 emotional distress you find from the evidence he
24 did suffer.

09:40:22 25 Proof of an outright denial of credit is

1 not necessary in order for you to award actual
2 damages under the Fair Credit Reporting Act.

3 If you are satisfied by a preponderance of
4 the evidence that the plaintiff sustained mental
09:40:32 5 or emotional damages as a result of the wrongs in
6 question, you should award a sum which will
7 reasonably and fairly compensate him for such
8 emotional distress.

9 If you, as a juror, further find that the
09:40:46 10 acts or omissions of the defendant that
11 proximately caused the actual injury or damage to
12 the plaintiff were willfully done, then you may,
13 if, in the exercise of your discretion, you
14 unanimously choose to do so, add to the award of
09:41:02 15 actual damages such amount as you shall
16 unanimously agree to be proper as punitive
17 damages.

18 Whether or not to make any award of
19 punitive damages in addition to actual damages is
09:41:12 20 a matter exclusively within your province. If
21 you find only negligent violations of the act,
22 you would not reach the issue of punitive
23 damages.

24 Punitive damages are awarded for the
09:41:26 25 purpose of punishing the defendant for its

1 wrongful conduct and to deter others from
2 engaging in similar wrongful conduct. You should
3 bear in mind, however, that the law requires that
4 the amount of punitive damages, if any, must be
09:41:40 5 fixed with calm discretion and sound reasoning.
6 Punitive damages must never be awarded due to
7 sympathy, bias, or prejudice with respect to the
8 parties.

9 If you choose to award punitive damages
09:41:52 10 against the defendant, Midland Credit Management,
11 Inc., for willful violation of the Fair Credit
12 Reporting Act, you may consider the following
13 facts in considering such an award: The stated
14 remedial purpose of the Fair Credit Reporting
09:42:06 15 Act; the harm to the consumer -- the harm the
16 consumer is expected to avoid or have corrected
17 by those requirements; the manner in which the
18 defendant conducted its business; the length of
19 time before the defendant corrected its mistake;
09:42:20 20 the degree of notice provided to the defendant
21 about its mistake, and defendant's awareness of
22 the mistake.

23 If you find that punitive damages should
24 be assessed against the defendant, you may
09:42:32 25 consider the financial resources of the defendant

1 in fixing the amount of such damages.

2 The fact that I have instructed you on the
3 law of damages must not be taken as an indication
4 that you should find for the plaintiff. It is
09:42:44 5 for you to decide on the evidence presented and
6 the rules of the law I have given you whether the
7 plaintiff is entitled to recover from the
8 defendant.

9 Instructions as to the measure of damages
09:43:00 10 are given for your guidance in the event you
11 should find in favor of the plaintiff, in
12 accordance with the other instructions I have
13 given you. However, if you return a verdict for
14 the plaintiff, you must decide the issue of
09:43:14 15 damages.

16 I instruct you that the burden is on the
17 plaintiff to prove by a preponderance of the
18 evidence each item of damages he claims and that
19 each item was caused by Midland Credit
09:43:26 20 Management, Inc. The plaintiff is not required
21 to prove the exact amount of his damages but must
22 show sufficient facts and circumstances to allow
23 you to make a reasonable estimate of each item.
24 If the plaintiff fails to do so, he cannot
09:43:42 25 recover for that item of damage.

1 It is for you, the jury, to decide whether
2 to award compensatory damages and, if so, what
3 amount. Therefore, if you decide that the
4 plaintiff has proven any or all of his claims,
09:43:56 5 then part of your remedies would be to award him
6 compensatory damages if you see fit to do so.

7 If you find for the plaintiff, you must
8 not take into account any consideration of
9 attorneys' fees or court costs in deciding the
09:44:08 10 amount of plaintiff's damages. The matter of
11 attorneys' fees and court costs will be decided
12 later by the Court.

13 You are the sole and exclusive judges of
14 the facts. As such, you must determine which of
09:44:22 15 the witnesses you believe, what portion of their
16 testimony you accept, and what weight you attach
17 to it.

18 At times during the trial, I may have
19 sustained objections to questions asked without
09:44:30 20 permitting the witness to answer. You may not
21 draw any inference from an unanswered question.
22 The law requires that your decision be made
23 solely upon competent evidence before you.

24 Competent evidence is the testimony from
09:44:46 25 the witnesses in person or testimony previously

1 given by deposition and exhibits admitted into
2 evidence by the Court. Statements, arguments,
3 and comments by the lawyers, objections and
4 rulings on objections and testimony I told you to
09:45:00 5 disregard are not evidence. Such items as I
6 exclude from your consideration will be excluded
7 because they are not legally admissible.

8 The law does not, however, require you to
9 accept all the evidence I admit, even though it
09:45:16 10 be competent. In determining what evidence you
11 will accept, you must make your own evaluation of
12 the testimony given by each of the witnesses and
13 determine the degree of weight you choose to give
14 his or her testimony. The testimony of the
09:45:30 15 witness may fail to conform to the facts as they
16 occurred because he or she is intentionally
17 telling a falsehood; because he or she did not
18 accurately see or hear that about which he or she
19 testified; because his or her recollection of the
09:45:44 20 event is faulty; or because he or she has not
21 expressed himself or herself clearly in giving
22 his or her testimony.

23 I also charge you that during the trial, I
24 may sometimes ask a witness a question. Please
09:45:56 25 do not assume that I have any opinion about the

1 subject matter of my questions. I may ask a
2 question simply to clarify a matter, not to help
3 one side of the case or hurt another side.

4 Remember at all times that you, as jurors,
09:46:08 5 are the sole judges of the facts in this case.
6 There is no magical formula by which one may
7 evaluate testimony. You bring with you to this
8 courtroom all of the experience and background of
9 your lives. In your everyday affairs, you
09:46:26 10 determine for yourself the reliability or
11 unreliability of statements made to you by
12 others. The same tests that you use in your
13 dealings are the tests which you apply in your
14 deliberations.

09:46:38 15 The interest or lack of interest of any
16 witness in the outcome of the case, the bias or
17 prejudice of a witness, if there be any, the age,
18 the appearance, the manner in which the witness
19 gives his or her testimony on the stand, the
09:46:52 20 opportunity that the witness had to observe the
21 facts concerning which he or she testifies, the
22 probability or improbability of the witness'
23 testimony, when viewed in light of all the
24 evidence in the case, are all items to be taken
09:47:06 25 into consideration by you in determining the

1 weight, if any, you will assign that witness'
2 testimony.

3 If such consideration makes it appear that
4 there is a discrepancy in the evidence, you will
09:47:16 5 have to consider whether the apparent discrepancy
6 may be reconciled by fitting the two stories
7 together. If, however, that is not possible, you
8 will then have to determine which of the
9 conflicting versions you will accept.

09:47:32 10 You should ask yourself whether there was
11 evidence tending to prove whether the witness
12 testified falsely concerning some important fact
13 or whether there was evidence at some other time
14 the witness said or did something or failed to
09:47:44 15 say or do something which was different from the
16 testimony the witness gave before you during
17 trial.

18 You should keep in mind, of course, that a
19 simple mistake by a witness does not necessarily
09:47:58 20 mean that the witness was not telling the truth
21 as he or she remembers it. Because people
22 naturally tend to forget some things and remember
23 other things incorrectly.

24 So if a witness has made a misstatement,
09:48:08 25 you need to consider whether that misstatement

1 was simply an innocent lapse of memory or an
2 intentional falsehood. And the significance of
3 that may depend on whether it has to do with an
4 important fact or only an unimportant detail.

09:48:22 5 You are to consider only the evidence in
6 the case. But in your consideration of the
7 evidence, you're not limited to the bald
8 statements of the witnesses. In other words, you
9 are not limited solely to what you see and hear
09:48:34 10 as the witnesses testify. You are permitted to
11 draw from facts which you find have been provided
12 such reasonable inferences as seem justified in
13 the light of your experience.

14 Inferences are deductions or conclusions
09:48:50 15 which reason and common sense lead the jury to
16 draw from facts which have been established by
17 the evidence in the case.

18 There are, generally speaking, two types
19 of evidence from which a jury may properly find
09:49:02 20 the truth as to the facts of a case. One is
21 direct evidence, such as the testimony of an
22 eyewitness, or documents which state
23 uncontroverted matters. The other is indirect or
24 circumstantial evidence, the proof of a chain of
09:49:18 25 circumstances pointing to the existence or

1 nonexistence of certain facts. The plaintiff may
2 prove his claims by presenting such indirect
3 evidence.

4 The testimony of a single witness which
09:49:30 5 produces, in your minds, belief in the likelihood
6 of the truth is sufficient for the proof of any
7 facts and would justify a verdict in accordance
8 with such testimony, even though a number of
9 witnesses may have testified to the contrary if,
09:49:44 10 after consideration of all the evidence in the
11 case, you hold greater belief in the accuracy and
12 reliability of the one witness.

13 Also, the number of witnesses testifying
14 regarding any particular issue is not
09:49:56 15 controlling. You are to decide the facts in this
16 case fairly and impartially, without any
17 sympathy, without any prejudice, without any
18 favoritism, and without any fear as to the
19 consequences of your decision.

09:50:10 20 You are to decide what the facts are based
21 upon the evidence that has been presented in the
22 case, not upon the basis of guesswork or
23 speculation. That does not mean, however, that
24 you are expected to leave your common sense
09:50:24 25 behind you. You are expected, instead, to use

1 your common sense in applying and understanding
2 the evidence in this case when you deliberate.

3 In order to return a verdict, it is
4 necessary that each juror agree thereto. Any
09:50:40 5 verdict that you render in this case must be
6 unanimous. This means that each of you must
7 agree to the verdict and all be satisfied with
8 the verdict and that the verdict returned is your
9 verdict.

09:50:54 10 Your verdict in the case should not be
11 based upon or influenced by any sympathy for
12 either party nor any prejudice for or against
13 either party. Your verdict should be based on
14 the evidence in this case that has been presented
09:51:06 15 to you from the witnesses who have testified,
16 whether in person or by deposition, and from the
17 exhibits. And, of course, your verdict should be
18 based on the law as I explain it to you.

19 Sympathy and prejudice should play no role no
09:51:20 20 your verdict whatsoever.

21 When you go to the jury room, you should
22 first select one of your members to act as your
23 foreperson. The foreperson will preside over
24 your deliberations and will speak for you here in
09:51:30 25 court.

1 And I will explain the verdict form to you
2 as soon as the attorneys have presented you their
3 closing arguments.

4 And are you ready?

09:51:42 5 MR. BENNETT: I am, Your Honor.

6 THE COURT: Tammi, are you ready?

7 COURTROOM DEPUTY: Yes, ma'am.

8 MR. BENNETT: Good morning. There
9 are many things in this country that make it
09:52:06 10 great. We probably all share that same view.

11 The obligation to vote, the protections we have
12 against government, against harm from one other.

13 But one of the greatest things we have is the
14 system we have for resolving disputes. Resolving
09:52:26 15 them rationally and to do it with our peers.

16 It's unmatched. And it's true in South Carolina,
17 Virginia, Alabama. It's true in California.

18 The jury system is what makes our job
19 possible. What makes it possible for Mr. Brim
09:52:42 20 and what makes it possible for Midland to come in
21 here and trust for a fair and rational result.

22 That doesn't happen without your public service.

23 A public service that is remarkable. You have
24 spent -- and as exhausting as it is for us to
09:53:00 25 speak and to prepare, you have had to listen.

CHERYL K. POWELL, CCR, RPR, FCRR

Federal Official Court Reporter

1729 Fifth Avenue, North

Birmingham, AL 35203

256-508-4050/wrd4wrdpr@aol.com

1 You've had to endure, and you've had to pay
2 careful attention. And so for that, I thank you.

3 Our lead counsel, Ms. Cauley, certainly
4 thanks you. And Mr. Sykstus and Mr. Brim thanks
09:53:16 5 you.

6 We put up on the monitor -- and we'll go
7 through this -- much of what I have here you've
8 heard. I'm not going to repeat a lot of the
9 evidence. And much of what I will talk about
09:53:28 10 will be the jury instructions themselves.

11 But we are here, attempting to enforce a
12 federal law. Something Congress passed. A law
13 that has punitive damages, as you've heard, a
14 rarity in federal laws.

09:53:44 15 And it's a law that has been in place
16 since the 70s. Early 70 when one of its
17 congressional supporters -- this is from the
18 congressional record -- explained with more
19 prescience than maybe sometimes Congress,
09:54:06 20 congressional act may deserve.

21 The FCRA is to protect consumers against
22 the trend towards the establishment of all sorts
23 of computerized databanks -- this is in the early
24 70's -- that place the consumer in great danger
09:54:20 25 of having his life and character reduced to

1 impersonal blips and keypunch holes in a stolid
2 and unthinking machine which can literally ruin
3 his reputation without cause. That's why we're
4 here.

09:54:34 5 This is not a law; this is not a claim
6 where my client was killed. Thankfully. This is
7 not a claim in which millions of gallons of oil
8 was dumped into a Gulf, destroying it. But this
9 is a claim brought under a federal statute. A
09:54:52 10 federal statute that requires Mr. Brim to come
11 before you and ask your help in avoiding what
12 Congress passed, a very potent and powerful law
13 to protect him with.

14 Now, I have opened, and there are a
09:55:10 15 couple -- two slides from my opening that I'll
16 just flash up. And I am certainly not good on
17 making future predictions. But I did suggest to
18 you in opening that defense strategy would be to
19 distract you.

09:55:30 20 You've heard the law and we'll talk about
21 it more. But the question in this case is simply
22 when the credit bureau disputes these ACDVs, when
23 those disputes were forwarded to Midland, did it
24 do a systematic detail search and inquiry?
09:55:46 25 That's it. That's all. If we prove that, we

1 win. If we prove it was negligent or reckless,
2 we win, period.

3 But there is something that our system
4 accepts. Not officially. But it's called jury
09:56:02 5 nullification. And that's when a party says and
6 they can't say this because they would -- the
7 Court typically would say you can't say that.
8 But what they say is, we understand.
9 Technically, we wrote the law. But you shouldn't
09:56:16 10 help this person. He did something wrong. He's
11 undeserving of your protection.

12 There is an identity theft case where the
13 identity thief was the son of the consumer whose
14 identity was stolen and it was still a close
09:56:38 15 relationship with those. Jury nullification.
16 Whether you like it or not, it's part of what we
17 do. Sometimes it is appropriate, maybe. But not
18 here.

19 This entire trial, from Midland's
09:56:54 20 prospective -- and they called two witnesses,
21 Dell and Redstone. This entire trial has been
22 about whether my client failed to do something,
23 whether my client failed to provide a
24 transactional detail report. And I admit, you
09:57:08 25 know, my finance degree was in 1989. So I don't

1 know what a -- maybe everybody else knows what
2 that was. But their witness didn't know what
3 that was, and he's been 15 years in this
4 business.

09:57:22 5 Redstone's witness, called by the
6 defendant, says even not all its employees may
7 know. Is this my client's fault? If we were
8 presenting you a case where my client in the day
9 that Midland got it -- he wrote a letter. The
09:57:42 10 credit bureau -- one letter, one dispute, one
11 credit bureau forwarded that dispute to them and
12 Midland verified it and he rushed down to federal
13 court and said, I want a federal lawsuit, that's
14 a different world. But I would assume you're
09:58:00 15 sick of hearing testimony about all the contacts
16 and all the instances in which my client sent
17 bank statements, faxed them, mailed them, talked
18 about them. Talked about it to Dell, the
19 industry partner that sold this information to
09:58:16 20 Midland; talked about it to Midland by phone.
21 Talked about it to Midland in letters. Made
22 disputes through the credit bureaus about it.

23 This isn't that one instance. And this is
24 not one ACDV. There are nine of them. Right?
09:58:34 25 The evidence is the defendant admits they

1 received five, maybe six. They said they didn't
2 get the Equifax one in August of '08. But when
3 this lawsuit was filed, the credit bureaus took
4 that as a dispute and forwarded ACDVs. When this
09:58:50 5 lawsuit was filed, they still verified it.

6 Now, other distractions -- let's talk
7 about what I projected would be a "look over
8 here, not at the law" argument by the defendant.

9 Well, Dell was never contacted at all.

09:59:14 10 Not once. And we want to talk about Dell? You
11 now have the defendant's exhibits. And if you
12 wanted to turn with me to Exhibit 21, Pages 13
13 and 14 first. This is the contract by which
14 Midland bought for five cents on the dollar --
09:59:46 15 bought this principal balance for 70 bucks,
16 about.

17 Look at 13 and 14. Remember they receive
18 8,000 disputes a week. Why didn't Midland send
19 this to acquisitions, ask for copies of documents
10:00:06 20 or anything? Because they have to pay for it.
21 Past the first 20 percent of their accounts --
22 they have to buy this. And that can go up to
23 \$50. It will cost them \$50 if they have reached
24 those thresholds to research a 70-dollar account.

10:00:28 25 While we're here, if you turn to Page 15,

CHERYL K. POWELL, CCR, RPR, FCRR

Federal Official Court Reporter

1729 Fifth Avenue, North

Birmingham, AL 35203

256-508-4050/wrd4wrdpr@aol.com

1 is this Dell's problem; that is, Dell had its own
2 credit-reporting issues. You saw -- you heard
3 that testimony. And Dell was responsible for
4 Dell's. But it isn't Dell's trade line that is
5 disputed in this case, and it's not Dell's credit
6 reporting. And Dell couldn't have done anything
7 about Midland's credit reporting to the credit
8 bureaus if it tried.

9 The credit bureaus all testified this was
10 Midland's trade line. Midland was responsible
11 for it. Midland's employee, Ms. Ross, testified
12 that it knew. She knew it was responsible for
13 its accuracy. But you don't need me to argue it.

14 The Dell contract prevents this
15 distraction under compliance with law. The
16 purchaser represents and warrants that it will
17 comply with all requirements of federal laws.
18 And if you want to turn to 16, well, if Dell is
19 at fault, if Dell is at fault, then Midland could
20 have gone after its industry partner. Look at
21 16. They can go back, and they could make some
22 claim against Dell. Why shove on to my client's
23 back Midland's problems with Dell?

24 And I'm just assuming that that
25 distraction would be offered in closing.

1 And if you look at Page 20, now, earlier
2 in this it defines an ineligible account, right?
3 It says Dell will not sell accounts that meet the
4 following criteria, consumer file bankruptcy,
10:02:08 5 other things. But one of them is it's been paid
6 off.

7 What happens? Well, the remedy Midland
8 would have had on this Paragraph A is to make
9 Dell buy it back. Go get its \$70 back. So why
10:02:26 10 is this our client's fault? Why is Dell and
11 Midland's mistake my client's problem?

12 This is from an economist. I'm not one.
13 This is a concept of externalities. Simple
14 definition. Externalities are costs arising from
10:02:58 15 an economic activity that affects somebody other
16 than the people engaged in that activity and are
17 not reflected in price. What is going on here?

18 Well, I was born in 1965. Some of you are
19 older. Some of you are younger. We all will
10:03:16 20 share the same just constant amazement about
21 where technology is going. Powerpoint
22 presentations, the ability to examine microfiche
23 records or any of this information. And that's
24 all fine.

10:03:34 25 But if you recall, the Fair Credit

1 Reporting Act's purpose is to stop shifting and
2 imposing that automated batch interface machine
3 problem on the consumer. And that's where the
4 externality problem is.

10:03:52 5 It is okay if Dell wants to save money by
6 using IEnnergizer in India. I'm not -- you know,
7 it's not proper to say you shouldn't send
8 business to India. If Dell wants to do that to
9 save money, it's fine. But when its vendor,
10:04:12 10 because of the way that these cost structures
11 have been set up -- and Midland shares the same.
12 I'll go through them at the end.

13 Remember the annual report. Cost is all
14 their business model. Cutting costs, reducing
10:04:26 15 costs, that's what they're about. Well, if you
16 want to save money, do it by efficiencies.
17 Negotiate with your paper vendor. Work out a
18 five-year contract with your vendor. Do whatever
19 you need. But only externalize the cost of doing
10:04:40 20 an investigation, the one that the law says
21 Midland has to do -- don't put it on my client.

22 And here's what happened. And I came in
23 this case later than my other lawyers. So a lot
24 of this I'm learning as you learn. The Dell
10:04:58 25 deposition. What happens? Well, this is what

CHERYL K. POWELL, CCR, RPR, FCRR

Federal Official Court Reporter

1729 Fifth Avenue, North

Birmingham, AL 35203

256-508-4050/wrd4wrdpr@aol.com

1 happened: Dell used a vendor, IEnergizer to take
2 the payment. After that occurred -- and the
3 example that I talked about with my co-counsel
4 over dinner last night is this is like a consumer
10:05:18 5 bringing in a payment in person and giving it to
6 the receptionist in a business. No one in this
7 case disputes that Dell was paid. That's not
8 what this dispute has ever been about.

9 The dispute is where is Dell's money? The
10:05:32 10 money was paid to the receptionist. Dell is
11 unhappy because the receptionist ran off with it
12 or lost it. Dell knows, Midland knows that our
13 client paid. But they don't know where they put
14 the money. So they're externalizing the research
10:05:50 15 effort on my client. Want him to be the private
16 investigator. Want him to do -- go to his bank,
17 which Redstone testified why doesn't Redstone
18 provide these transactional detail reports to
19 Dell? Because Dell could do it itself from its
10:06:10 20 end.

21 How many \$954.12 payments came in from
22 Redstone Credit Union that day at that time? How
23 hard is that to research or for Midland to have
24 in its investigation demand Dell research? How
10:06:26 25 hard? Why is it hard? Because it's IEnergizer

CHERYL K. POWELL, CCR, RPR, FCRR

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1 in India that took the money. If they want to
2 save money by using IEnnergizer in India, if they
3 want to save money, that's fine. But you do not
4 externalize that on the consumer. Particularly
5 in light of a regulatory regime that says it is
6 not his obligation to do an investigation.

7 Let's go to transactional detail report.
8 Let's talk more about this.

9 It's frustrating to have a trial about
10 whether or not an investigation occurred when the
11 ACDV was received turn into this whether my
12 client should have known what a transactional
13 detail report is. It has nothing to do with the
14 case. Has nothing. And it's -- for someone like
15 a lawyer, maybe someone like yourself, there's a
16 natural curiosity, we want all T's crossed, I's
17 dotted. We want to understand exactly what
18 happened. A perfect view. But it's irrelevant.
19 It's irrelevant.

20 There is nothing in the instructions that
21 suggests my client had any obligation to do an
22 investigation. And there is something important,
23 and I'll go through these instructions in a bit.
24 But if you could help me and turn to Page 5 of
25 your instructions.

1 Is it the end of the world if Midland had
2 just said, we don't know what happened; we're
3 just taking it off? Is Midland's
4 30-million-dollar business going to grind to a
5 halt for that 70-dollar account? No.

10:08:28

6 And the law contemplates that. You have
7 already heard and you've already read the Midland
8 procedure that says it's the consumer's burden.
9 Past 45 days, it's his burden to prove he doesn't
10 owe the money.

10:08:46

11 That's not the law. You have three
12 possible realities that could be the result of an
13 investigation. One, and this is the bottom
14 section. But under E, you can find that the
15 information was complete and it was accurate;
16 that is, the investigation required by the Fair
17 Credit Reporting Act when the ACDVs came in,
18 Midland could have actually conclusively
19 determined we are certain that he did not pay the
20 debt. Two, they could determine we are certain
21 he paid the debt -- and we think that conclusion
22 is self-evident. But Midland did not. So what's
23 the third option? The third option is no one
24 knows; that is, when Midland received the
25 investigation, it was unable to verify that it

10:09:04

10:09:18

10:09:36

1 had been paid or not paid. It couldn't
2 determine. It couldn't determine because it
3 didn't want to go to Dell to get Dell to go to
4 IEnnergizer.

10:09:52 5 Well, what happens if there's uncertainty?
6 The law is it cannot be verified. It must come
7 off the credit report. That's it. And you
8 shouldn't have to hire lawyers and look at all
9 the lawyers here and come to federal court to get
10:10:08 10 your credit report fixed. And you shouldn't have
11 to stay in federal litigation nine months before
12 a defendant wakes up and does it.

13 Other issues, why this is a total
14 distraction. Midland's own witness never even
10:10:24 15 heard of this. Midland still believes that even
16 if Midland had received a transactional detail
17 report, they testified it wouldn't have mattered
18 unless they had a permission slip from Dell to
19 release this.

10:10:36 20 Midland -- the defense lawyers -- all
21 right. The defense lawyers issued a subpoena.
22 That was the evidence you've heard -- for the
23 bank statement. Never issued a subpoena for the
24 transactional detail report -- the supposed
10:10:46 25 really important document. Never. In fact, you

1 heard testimony that it was received only when
2 Mr. Brim's lawyers had to go find it. Figure out
3 what it was. But it was so important, no
4 subpoena?

10:11:02 5 They still waited a month. They received
6 it early August. If it was that earth-shattering
7 news that so conclusively ended this; and that
8 is, more importantly, if Midland is telling the
9 truth that the reason they didn't delete until
10:11:24 10 September had anything to do with this
11 transactional detail report, this is disproven by
12 their own conduct.

13 The irony here at the bottom -- and maybe
14 this is as irrelevant as the whole transactional
10:11:44 15 detail report. But giving \$954 -- and I'm -- and
16 maybe this person in California that received the
17 credit is deserving. But the irony here is the
18 way that Dell and Midland have set up their shop
19 is to put all of this on my client.

10:12:04 20 The guy who, within a month, to build his
21 credit -- and this is -- Mr. Brim is -- his
22 entire adult life has been struggling to make
23 himself better. He wanted to buy a house so he
24 could get married to the mother of his daughters
10:12:20 25 and they could now move in. He has gone to

1 school. He is working full-time jobs and is
2 still trying to get his CPA or his accounting
3 master's. He is doing everything that we, as
4 Americans, would want another American to do.
10:12:38 5 And he has suffered the blunt.

6 Another distraction. You're getting debt
7 collector calls. You owe this money. I don't.
8 Here's my bank statement. I've told A, B, and C
9 this. You owe this money. I don't. So we send
10:12:58 10 a letter that says, stop harassing me. Stop
11 calling me. Here is the information you would
12 need. And now Midland is saying, oh, that's the
13 reason we never fixed anything.

14 Well, you have to judge not just the
10:13:12 15 witness. You have to judge a party in this case.
16 Midland is representing to you that the reason it
17 did not correct his credit report is because he
18 said, stop calling me. And that's not true.

19 The evidence when I recalled their
10:13:30 20 witness, he testified it wouldn't have matter.
21 What would they have done? They would have heard
22 for the umpteenth time, I paid this debt. Here's
23 the information. And for the umpteenth time,
24 never mention anything about transactional detail
10:13:44 25 report. And to represent to you with a straight

1 face that that has anything to do with why it
2 failed to do an investigation when the credit
3 reporting agencies contacted Midland is
4 disingenuous.

10:14:00 5 Let's talk about other -- in Virginia, we
6 don't -- here, too, I'm sure. We don't talk
7 disrespectfully about other people. But you have
8 had representations made to you, for example,
9 that my client lied.

10:14:16 10 Remember the sequence with the deposition?
11 And it was insinuated to you that at his
12 deposition he had claimed, I had no idea about
13 the transactional detail report, and that was the
14 end of it. And one part of the deposition was
10:14:28 15 taken out of the context of the other. And a
16 page or two later, Ms. Cauley read the rest.
17 That's not what he said.

18 You've heard testimony that in a number of
19 instances that -- the Equifax is a good example.
10:14:44 20 It's been insinuated that Equifax took -- that
21 Equifax might have not had any balance showing
22 for nine months or so. Right? You have Exhibit
23 29, which is from Midland in discovery that shows
24 every month that they re-reported. So there's no
10:15:08 25 mystery. Yes, maybe in some alternate reality if

1 Midland had not reported after August of '08, in
2 that alternate reality -- not this one -- that it
3 might have shown a zero balance.

4 But you have Midland's own documents.

10:15:28 5 It's audacious to make that argument. You'll
6 have them in front of you. You'll have them in
7 the back room that show what they reported every
8 month.

9 Mortgage attempts. Right? My client has
10:15:38 10 been involved in this process before with Dell
11 and now with Midland for seven years. And the
12 insinuation is maybe he never really applied for
13 mortgages. Remember that? You don't remember
14 what date you applied.

10:15:54 15 The best part about it is you have written
16 documents. You've got the credit reports.
17 You've got credit reports that confirm a Capital
18 One credit application in August of '08; a
19 mortgage application with an Equifax report in
10:16:12 20 August of '08. Another mortgage with First
21 Metropolitan September of '08 and so forth. I
22 don't -- I can't hide what is in those credit
23 reports. They can't hide it.

24 The insinuation is, well, that somehow
10:16:32 25 anything else besides this live, painful, unpaid

CHERYL K. POWELL, CCR, RPR, FCRR

Federal Official Court Reporter

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1 collection account could have harmed my client's
2 credit. You have a 2002 delinquency history on a
3 student loan.

4 The defendant is asking you to say, well,
10:16:48 5 that is probably why he couldn't get a mortgage
6 in 2009. You have a late payment on a Sam's Club
7 credit card that was 2007. Both of them, by the
8 way, the credit report shows, paid off.

9 This is what this case is about. And you
10:17:10 10 have the annual report, Exhibit 82. This is what
11 this case is about. And why do we have -- why
12 does anyone make any pretense otherwise?

13 This is a case about Midland attempting to
14 minimize its costs. That's what it's about.
10:17:30 15 That's its target in its annual report. Midland
16 says, to stay on track, it's got to keep its
17 costs below that number.

18 Otherwise, two excerpts, Page 2 -- and you
19 don't have to look, but this is so that if you
10:17:48 20 want to -- Page 2 and explain it -- Page 2 of
21 their annual report, their big strategy is cost
22 efficiency. And then page -- and in order to
23 survive in this business model, the defendant
24 says we've got to keep our costs especially low.
10:18:22 25 And that's what this case is about.

1 Let's turn to the preponderance of the
2 evidence. You have the jury instructions. Let
3 me suggest to you what we think you should do
4 with those instructions. And there is no way I
10:18:32 5 would represent to you that I'm not bias. I
6 mean, I drank the Kool-aid.

7 I'm a consumer advocate. And I represent
8 Mr. Brim. But these aren't drink the Kool-aid.
9 These aren't consumer advocate. This is the law.
10:18:50 10 And in order, pretty much, that you would apply
11 them.

12 The burden of proof, preponderance of the
13 evidence, not beyond a reasonable doubt like in a
14 criminal case or even clear and convincing
10:18:58 15 evidence, the standard when you have to prove
16 fraud.

17 In this instance, preponderance. If you
18 think 51 percent more likely we are right on the
19 point than the other side, we win that point. If
10:19:12 20 you think at a 51-percent point the defendant was
21 negligent or willfully violated the act or my
22 client suffered damages, then that point is for
23 the plaintiff.

24 There are two kinds of evidence. And
10:19:30 25 these cases -- nobody contemplated taking the

1 credit reporting dispute process into federal
2 court. Certainly Mr. Brim didn't. So your
3 evidence is varied. Some of it is direct. Some
4 of it is circumstantial.

10:19:44 5 The direct is a piece of paper in front of
6 you that says there was a mortgage application,
7 credit report on this date in 2008.

8 Circumstantial, he was denied credit. He
9 didn't get credit. And there was no other
10:20:00 10 evidence or explanation beyond that it was the
11 Midland denial. The Midland account.

12 Direct is objectively determinable,
13 expressed in front of you. Indirect is you have
14 to draw a common sense inference.

10:20:20 15 The Fair Credit Reporting Act. You've
16 heard the actual text of the statute. And it's
17 nothing new to Midland. This is what the law is.
18 1681(1)(a), those are the ACDVs.

19 So let's make a point here. The question
10:20:38 20 about, well, if Midland was not allowed to
21 contact you or any of the discussions, rather,
22 about what my client and Midland would have had
23 to do as part of an investigation discussion are
24 irrelevant.

10:20:52 25 The only rights my client picks up -- and

1 he picks up a lot of them -- are when the credit
2 reporting agencies send the disputes over. What
3 does that mean? Well, to our detriment, it means
4 that until he disputed the account in July and
10:21:08 5 early August of '08, none of his injury is
6 compensable.

7 He was sued. You'll see an affidavit in
8 there where a Midland employee testifies or signs
9 a sworn affidavit, says, I have personal
10:21:24 10 knowledge of this account, and I know he didn't
11 pay it. All right? That might offend you -- it
12 may -- for its being disingenuous. But there's
13 no compensation.

14 But once my client makes a dispute, the
10:21:40 15 ones that come through the credit bureaus, the
16 defendant picks up a world of obligations.

17 Now, there are two types of claims. And
18 we'll go through -- well, actually, I'm sorry.
19 Go to the Fair Credit Reporting Act with E at the
10:22:04 20 top.

21 We believe there was never an
22 investigation. You'll see the definition. It's
23 not a matter of did they do enough of an
24 investigation or even was it reasonable. An
10:22:18 25 investigation is a deep, searching inquiry. It's

1 not an electronic pawn where you just have an
2 electronic blip you're knocking back and forth.
3 An investigation, as we'll talk about in the
4 instructions, is a deep, searching inquiry. It
10:22:34 5 is not having a computer say, no. The roadblock
6 means no investigation.

7 But let's assume that there was an
8 investigation. Could on the facts before you
9 Midland have concluded with certainty that our
10:22:50 10 client owed this debt? If it could not have
11 concluded with certainty that our client owed
12 this debt, then it cannot be verified. And you
13 have to do the following, including delete. The
14 modified would be if you're disputing the
10:23:16 15 balance.

16 Negligence, there are two standards. And
17 maybe not entirely accurate, but it might help to
18 think about negligence as a subset of
19 willfulness; as negligent is careless. Careless
10:23:32 20 indifference or unreasonable or imprudent
21 conduct. Doesn't have to prove the same
22 thresholds as for willfulness.

23 Next, please. And willfulness will be
24 reckless. Both of them involve balancing tests
10:23:48 25 that consider the cost of doing more such as

1 deleting a 70-dollar account versus the potential
2 impact to my client, potential impact to other
3 consumers in this country.

4 Factors to be considered. And this was
10:24:12 5 the law before Mr. Brim ever brought a lawsuit.
6 The factors to be considered in determining
7 whether the investigation was reasonable -- and
8 this is if you even find there was an
9 investigation at all attempted.

10:24:24 10 Factors to be considered, whether the
11 consumer alerted the defendant that the
12 information was unreliable, whether the credit
13 bureaus alerted the defendant that it was
14 contested, and the cost of verifying the accuracy
10:24:36 15 versus the harm of reporting.

16 I mean, the way that this system is set
17 up -- the Fair Credit Reporting Act is set up is
18 to give -- you don't want anybody rushing into
19 court because they have an inaccurate item on
10:24:50 20 their credit report. So you go home, pull up
21 your credit report. Wow. That's inaccurate.
22 You can't go to court. You shouldn't be able to
23 go to court. We have to give creditors an
24 opportunity to fix it. You don't have to give
10:25:02 25 them ten opportunities or two year's worth. My

1 client did. But that's the way it's set up.

2 And those balancing questions shift. The
3 point where my client has provided them
4 information -- they have the dispute. Now all of
10:25:20 5 a sudden, they have a much greater obligation to
6 investigate and determine the inaccuracy or
7 accuracy of their account.

8 You saw this in my opening. These are the
9 definitions. Courts have accepted definition of
10:25:42 10 investigation from a dictionary. Same dictionary
11 you can get in San Diego, I'm certain. An
12 investigation.

13 Whatever you want to think about
14 transactional detail reports or whether my client
10:25:54 15 had three mortgage denials or one or the like,
16 think: When it received the ACDVs, is there any
17 evidence at all -- at all that a detailed inquiry
18 of systematic examination was done?

19 When the ACDVs came in, was there any
10:26:16 20 evidence that there was a careful inquiry? No.
21 95 to 99 percent of the time, it is an automated
22 batch interface system.

23 My client -- 100 percent of his disputes
24 were automated batch system. There was never a
10:26:32 25 systematic or detailed inquiry.

1 And so the defendant is not arguing, we
2 did that. They're arguing, don't help Mr. Brim.
3 And this is the jury nullification argument we
4 very much are asking you not to buy into.

10:26:46 5 Next. If it knows it's inaccurate, it
6 can't keep publishing it. Even if it really
7 wants my client's help at finding the money at
8 IEnergizer, it doesn't have the right to use his
9 credit report, to hold it hostage, to force him
10:27:08 10 to work on behalf of Dell as a cost savings.

11 Next. These are the ACDVs. Top ones
12 Midland acknowledges. The bottom ones it
13 doesn't. But the evidence shows them. You've
14 already heard Ms. Ross. There isn't any contest.

10:27:28 15 The facts you heard the Court read in the
16 beginning of the trial -- they acknowledge that
17 all they do with these disputes is the automatic
18 system.

19 The next. What is willful? Reckless. It
10:27:44 20 shouldn't say agency. It should say the
21 furnisher. Must establish the action of the
22 furnisher is reckless. When is it reckless?
23 It's reckless if you run a risk of violating the
24 law substantially greater than the risk
10:27:58 25 associated with a merely careless reading.

1 8,000 disputes a day. And if you had the
2 misfortune of having me as your plaintiff's
3 lawyer in a future jury, I cannot imagine you
4 would ever hear of any creditor -- of Capital One
10:28:16 5 or MBNA or of anyone who receives 8,000 disputes
6 a day. Having a consumer advocate that does FCRA
7 work -- 8,000 disputes a week, I mean, is a
8 remarkable number.

9 Are all of those 8,000 consumers making up
10:28:36 10 their dispute? Are they all individuals that
11 should have known to go get a transactional
12 detail report? And are they all -- we don't
13 know. We do know all of them are disputing
14 accounts that were bought for five cents on the
10:28:50 15 dollar.

16 Next, please. Now, the damage structure
17 is this. And we're hoping that middle part isn't
18 your choice. But it is the law. If you find
19 their conduct was merely careless, unreasonable
10:29:06 20 but not reckless, then you award actual damages.
21 That's it. If you find it was reckless, and you
22 find actual damages that are more than a thousand
23 dollars, then you award whatever they are, all
24 the actuals plus you determine a punitive damage
10:29:26 25 number.

1 On the other hand, it is possible that you
2 say, they did something wrong, reckless. Doesn't
3 have to be malicious or evil or fraudulent, but
4 reckless. But we don't think you suffered any
10:29:42 5 harm or you didn't suffer any harm more than a
6 thousand dollars.

7 In that case, it's that bottom one; that
8 is, you would award statutory damages between a
9 hundred and a thousand dollars. And then you
10:29:54 10 would award punitive damages.

11 The structure of the FCRA actually doesn't
12 require actual damages to recover for a willful
13 violation. But there are actual damages. And
14 there was a willful violation.

10:30:06 15 Actual damages, please. Now, the bottom
16 part, another remarkable thing about the Fair
17 Credit Reporting Act is the types of damage that
18 Congress contemplated that consumers would suffer
19 isn't your "I lost a limb," which we certainly
10:30:24 20 believe is the much greater magnitude. But still
21 important, out-of-pocket expenses.

22 You've heard testimony as to time spent.
23 A month of this enduring and spending half his
24 year's vacation, just sitting in court alone,
10:30:42 25 plus all the efforts Mr. Brim has made. His

1 postage bills were -- you've got the exhibits.
2 \$30. Almost half the amount that was paid for
3 this account.

4 And then you have damages for personal
10:30:54 5 humiliation, embarrassment, anguish, and
6 emotional distress. And the law is, as you see
7 on the next page, that there isn't a way to give
8 a specific dollar number. And the truth is, this
9 is where the lawyers get to play -- we have a
10:31:16 10 much easier job because we don't get to determine
11 what the value of those are. What I would
12 believe is immaterial. You -- it's your job.
13 It's your valuation.

14 Its in the beginning of this process when
10:31:28 15 the dispute started, Midland had sat down with my
16 client and said, we're going to take away your
17 credit for the next year and a half, two years,
18 you're going to have to go to federal court to
19 redeem your credit, you're going to have to
10:31:44 20 borrow money from your mom because you can't pay
21 your hotel bill to do your job because you're at
22 your Capital One credit limit. You can't extend
23 your Capital credit limit because of this. You
24 cannot get a new credit card because of this.
10:32:00 25 You can't buy a house sufficient for your -- to

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1 get married and have your kids live with you
2 because of this. The beginning of that, what
3 would have been a number that a reasonable
4 factfinder would say? That is the number you
10:32:14 5 have to evaluate. And my valuation doesn't
6 matter.

7 And it's a tough economy for a lot of
8 people. It is in Virginia. I'm sure here. But
9 any amount you give my client is more than he has
10:32:32 10 today. And he is not asking you for any dollar
11 amount at all. I am asking you.

12 In this instance, a fair bargain, a fair
13 number -- and it is a lot of money -- should be
14 greater than \$100,000 of actual damages. Nobody
10:32:52 15 died. Nobody was killed. He's 32 --

16 PLAINTIFF BRIM: 33.

17 MR. BENNETT: 33. Been an adult
18 how many years now? And two of those he has
19 spent trying to redeem his financial life. A
10:33:08 20 life he had worked hard to build.

21 On this earth, we have one life. We
22 respect that life. In his adult life, two of
23 those years have been absorbed with this. He's
24 in federal court with a bunch of strangers,
10:33:24 25 having you examine his credit, having you --

1 having to sit here and listen to attacks on --
2 not his integrity, but his even knowledge of the
3 banking systems amongst other things. \$100,000
4 is a modest recovery.

10:33:46 5 And I will tell you -- I will represent to
6 you as an officer of the Court I have not -- he
7 has not asked me to say that. And I have not
8 talked to him about any such numbers. But that's
9 a number that should be used as a starting point.

10:33:58 10 You have no exact standard to be applied.
11 It's your judgment.

12 Proximate cause. Now, the defendant has
13 implied in argument that somehow you have to
14 eliminate every other possibility for credit
10:34:16 15 denial for the stress.

16 I mean, he comes at this case -- he was
17 already burdened before they had to throw on the
18 back of that -- his back -- he was already
19 burdened with the challenge of school and of his
10:34:30 20 life, his work life and the stress that he deals
21 with. And to saddle that, which exponentially
22 could magnify it, with all these additional
23 problems. There is certainly enough evidence you
24 could find some causal relationship between harm
10:34:48 25 he suffered, credit denials, time lost, out of

1 pocket -- small, the mailings -- humiliation,
2 embarrassment, and distress. You can find that
3 this was a substantial factor. And you don't
4 need to find it was the only one. It is not the
10:35:02 5 law that it has to be the only factor.

6 Damages. Well, the mortgage applications
7 are the inquiry laws. There's a bunch of them.
8 There's no evidence. There's only missiles
9 launched from across the room. There's no
10:35:22 10 evidence of any explanation for why my client
11 couldn't get those mortgages, despite -- if you
12 look at those credit reports, going back to early
13 2008 -- and we can't recover for that. Only when
14 he made the FCRA disputes.

10:35:36 15 He was trying to get his house. And he
16 finally got it. And if you look at Exhibit 15
17 and 47 -- 15 and 47 has the notes from Midland
18 where Platinum Mortgage -- and I've never heard
19 of them. But that's a company you might want to
10:35:52 20 look up. Platinum Mortgage made multiple calls
21 to Midland, trying to get the loan done. That's
22 the only reason it happened in March of '09.
23 Because of the exemplary efforts made. And
24 Platinum Mortgage had tried to get the loan
10:36:08 25 through, if you'll look at the credit reports, as

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1 much as a year earlier.

2 Credit cards. American Express. Let's
3 talk about distractions again. There is an
4 American Express credit denial letter that says
10:36:18 5 you were denied because of your Transunion credit
6 report and the reasons -- and these are called
7 adverse action reasons.

8 The first one at the top -- the main one
9 is because of a collection account in your file.
10:36:32 10 This was May of '09. And the second one is
11 recent delinquency. Then if you look at the
12 Transunion report, it is there is no other
13 collection and no other recent delinquency
14 besides this.

10:36:44 15 The defendant wants to use three lines of
16 a deposition of a litigation witness from
17 Transunion that has limited knowledge of the case
18 in answering a general question: If an account
19 is coded as disputed, is it scored? And that's
10:37:02 20 why the credit card denial is uncertain. But
21 there's a difference. And the document shows
22 this. If you'll take a look at Exhibit 53 --

23 THE COURT: Now, you have eight
24 minutes total left.

10:37:24 25 MR. BENNETT: Thank you, Judge.

1 Well, actually, I'll tell you this: If
2 you'll take a look at -- just write these down.
3 How about that? Exhibit 72 and Exhibit 68.
4 Those are Experian. And this -- I say Experian
5 because they give you a good contrast of what
6 Mr. Newnom would be talking about. There's a
7 difference between having a status that is
8 showing as disputed and having a comment or
9 remark that is showing as disputed.

10 In the earliest, Exhibit 68, Experian
11 report, if you look at the Midland trade line --
12 and just to contrast, it shows the difference.
13 They all use the same reporting code. And it
14 says status, collection. Remark, disputed. Then
15 after the lawsuit, Experian changed it. That's
16 Exhibit 72. And now the status is showing no
17 collection, no status. That is when it is not
18 scored.

19 When you look at exhibit -- any of the
20 Transunion reports, Exhibit 53, Page 139, you'll
21 see something different. You'll see that the
22 status is still reporting as a collection
23 account. It is not reporting in a disputed
24 status. There's just a text note that says if
25 somebody in this day and age actually reads

1 credit reports instead of have computer process
2 them, they would have seen the mention of a
3 dispute.

4 Punitive damages. You have a standard for
10:39:00 5 punitive damages. There were no FCRA procedures.
6 There's no evidence of training. The automated
7 batch interface system is 95 to 99 percent of the
8 time.

9 Small amount of money. Cost is the sole
10:39:18 10 factor. And there is zero, zero remorse. As a
11 plaintiff's lawyer, the hardest defense strategy
12 is to come in here and go, look, you know, we
13 screwed up. Do you know how much data we have?
14 We screwed up. That's not what you have. You
10:39:36 15 have endured through three days of trial a theme
16 that my client is at fault.

17 And you have a punitive damage option.
18 The shareholder equity -- this is in the
19 report -- is in 2010, 302 million dollars.
10:39:54 20 Punitive damages are designed to deter. They're
21 not for Mr. Brim. They're not for his lawyers.
22 They are for everybody else. Those other 700
23 and -- 7,999 folks who might have disputes or
24 concerns. This is how you tell Midland in its
10:40:12 25 offices, change your system.

1 I'll argue briefly, hopefully three or
2 four minutes, when I'm done. Thank you.

3 THE COURT: Can I see the
4 attorneys on this side right quick?

10:40:24 5 (Bench discussion off the record.)

6 (In open court. Jury present.)

7 THE COURT: Let me ask you all:
8 Do you need a break? Would it be nice to have a
9 break? Okay. Before you break your break, I
10:41:10 10 would like for you to go to Page 8 of your
11 charges because I just discovered a mistake. Let
12 me know when you have it. Sometimes when you do
13 these, you read it so many times, you don't see
14 it.

10:41:28 15 Do you see in the middle of the page where
16 it says, to prove willful violation -- do you see
17 that? Okay. It should say, to prove willful
18 violation, a consumer must prove that defendant.
19 Strike out "a consumer reporting agency" and just
10:41:46 20 write "defendant."

21 And two lines down, to prove a reckless
22 violation, a consumer must establish that the
23 action of -- instead of "the agency," you should
24 write "defendant." And that's it.

10:42:00 25 And let's take a break until 11:00

1 o'clock. And while you're on break, don't
2 discuss the case among yourselves or with anyone
3 else. Okay? Thank you.

4 (Jury excused.)

10:42:10 5 (Short recess.)

6 (In open court. Jury present.)

7 THE COURT: Have a seat. You
8 ready?

9 MR. LANGLEY: Yes, Your Honor.

11:05:52 10 THE COURT: Go ahead.

11 MR. LANGLEY: May it please the
12 Court.

13 Like Mr. Bennett, I want to thank you for
14 being here. I know you actually really didn't
11:06:06 15 have a choice. You got a federal summons, and
16 you had to show up. I know many, if not all of
17 you, probably did not want to be on the jury.
18 But I thank you, and Midland Credit Management
19 thanks you.

11:06:18 20 For Mr. Bennett to suggest that Midland is
21 insincere about this case is just disingenuous.
22 We have two people who have come from San Diego
23 to be here for this trial. This is important to
24 them, or they would not have been here.

11:06:38 25 Mr. Bennett, either through oversight

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1 because of a legitimate difference of opinion or
2 because of deliberate neglect, has glossed over
3 our main argument in this case.

4 Make no mistake about this. Our main
11:06:58 5 argument in this case -- and I'll come back to
6 this -- is that even if we had done the things
7 that the plaintiff says we should have done, the
8 result would have been the same. And I know that
9 may seem to you kind of insensitive or what's the
11:07:16 10 point?

11 But this is where the law comes into play.
12 The law that you have in your hands. Because the
13 law requires that they prove proximate cause. In
14 other words, they have to show that had the
11:07:34 15 investigation been done differently, that the
16 result would have been different. And if the
17 result would have been different -- would not
18 have been different, then they cannot recover.
19 That is their burden to prove. And I
11:07:48 20 respectfully submit to you that they have not met
21 their burden in this case.

22 The judge has instructed you on the law.
23 And on Page 2 at the bottom, it says in this
24 case, the plaintiff has the burden of proof; that
11:08:08 25 is, the burden to establish by a preponderance of

1 the evidence that he is entitled to recover. And
2 the instructions go on to say, where they detail
3 the two particular claims that are raised by
4 plaintiff, each of the elements that the
11:08:24 5 plaintiff must prove. We don't have to prove
6 anything.

7 Now, I think we have proved some things.
8 I'm going to highlight those later in my closing
9 remarks. But the burden of proof is on the
11:08:38 10 plaintiff. They are the ones that have to show
11 you that these things happened and that, had they
12 happened differently, it would have mattered.
13 And they did not in this case.

14 The real issues that we're here about --
11:08:56 15 Mr. Bennett talked a lot about congressional
16 intent from the 1970s and externalities. But the
17 real law that matters is the law that you have in
18 your hands. It is the law that the judge has
19 already given you. That's what matters.

11:09:10 20 The other thing that matters are not the
21 suppositions that the plaintiff or their counsel
22 are making but the evidence that's actually in
23 the case. These are not mere technicalities.
24 These are the premises upon which the justice
11:09:28 25 system is built; that the decisions are based on

1 the law and the evidence.

2 And so what you will hear from me -- and
3 the only things you will see me show you during
4 my closing remarks -- are going to be the law and
11:09:42 5 the evidence. Because that's what matters.

6 At the end, the arguments of counsel,
7 plaintiff or defense, are not going to win or
8 lose this case. This case is going to be decided
9 on the law and facts. And we believe that the
11:10:02 10 law and facts will lead you to the conclusion,
11 whether you like Midland or not, that Midland is
12 entitled to a defense verdict in this case.

13 We are here because of a Fair Credit
14 Reporting Act case. But it did not take a
11:10:20 15 federal lawsuit to fix this. What it took was
16 confirmation from the original creditor that the
17 account was paid off. You saw our procedures.
18 You saw -- and I'll show it to you in a little
19 bit. But you saw in the manual where it says
11:10:38 20 that what we're looking for when there is a
21 paid-prior dispute is confirmation from the
22 original creditor. Why? We're in the business
23 of buying accounts from other people. So if
24 someone says, hey. I already paid this, what we
11:10:50 25 need to see is something from the original

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1 creditor's side, showing that that, in fact, is
2 the case.

3 And as soon as Midland received word from
4 Dell this year -- excuse me. In 2010 -- that
11:11:10 5 Dell had been able to determine what happened and
6 they had determined that, hey, this account is
7 not due and payable, Midland did what? They sent
8 that UDF form, the universal data form. You
9 heard testimony about it. They sent that form to
11:11:22 10 all of the CRAs, the credit reporting agencies,
11 and instructed them to delete this account.

12 It didn't take a federal lawsuit to fix
13 this. It took confirmation from the original
14 creditor. Now, we may quibble about how that was
11:11:40 15 supposed to have happened, but it's clear from
16 Midland's policies that that is what is required.

17 There are going to be three main things
18 that I talk to you about over the next few
19 minutes. And I will guarantee you that I will
11:11:56 20 not talk for as long as Mr. Bennett did. But
21 we're going to talk about the plaintiff's
22 damages, what they're claiming in damages; we're
23 going to talk about Midland's investigation of
24 this dispute and its processes for investigating
11:12:10 25 disputes; and we're going to talk about

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1 causation.

2 First of all, let's start with the damages
3 that the plaintiff is claiming in this case.

4 Mr. Bennett and I each agreed on one
11:12:22 5 thing; and that is, if the plaintiff is entitled
6 to recover damages at all, it's those damages
7 that he's incurred after the first dispute that
8 he makes with the consumer reporting agency. And
9 there's no dispute that that was in August of
11:12:36 10 2008.

11 There's also no dispute that this account
12 was deleted in its entirety in September, 2010.
13 So the extent we're talking about the damages
14 period at all, we're talking about August of 2008
11:12:52 15 through September of 2010.

16 What are the damages that Mr. Brim is
17 claiming in this case? Well, principally, what
18 he is seeking are damages related to credit
19 denials and damages for mental anguish or
11:13:10 20 emotional distress.

21 We talked about the credit denials
22 yesterday. I asked Mr. Brim questions about
23 those. Some probing questions about those. And
24 Mr. Bennett said, well, Mr. Langley is just
11:13:24 25 trying to suggest some alternate reality. We

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1 know these people denied these loans. No; we
2 don't actually know they denied the loans.
3 Mr. Brim himself could not say they actually
4 denied the loans. He was ambivalent about
5 whether he actually applied for the loans or not.
6 All we really know is that inquiries appear on
7 the reports. Nobody testified that that was
8 because there was an application. And more
9 importantly, nobody testified, not even Mr. Brim
10 himself, that he was denied any of those loans
11 because of Midland.

12 You didn't hear testimony from a single
13 creditor in this case, saying that they denied
14 Mr. Brim credit because of the Midland account.

15 Plaintiff took depositions of Transunion.
16 They took depositions of Experian. They took
17 depositions of Equifax. They could have taken
18 whatever depositions they wanted. They didn't
19 take a single deposition of a creditor in this
20 case. What does that tell you? If a creditor
21 had actually denied Mr. Brim credit because of
22 the Midland account, I submit to you you would
23 have heard testimony on it. You never saw any
24 documents from any of those mortgage companies.
25 The only document that you saw was an American

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1 Express denial letter.

2 And this is Plaintiff's Exhibit 7, if you
3 would rather look in your notebook.

4 So for all the credit denials that
11:15:18 5 Mr. Brim is claiming in this case, we have one
6 document to support an actual denial, and it's
7 this American Express letter.

8 And the American Express letter says, we
9 are unable to open an account for you at this
11:15:32 10 time for the following reason: Your consumer
11 credit bureau score from Transunion is too low.

12 You just heard Mr. Bennett say it was
13 because of the Transunion report. No. We can
14 look at the document and know why American
11:15:50 15 Express denied Mr. Brim credit. Because his
16 consumer credit bureau score from Transunion is
17 too low. And that's why the testimony from
18 Transunion is so important in this case. The
19 dots have to be connected here.

11:16:06 20 Let's step back for a minute. There's
21 nothing in this letter that mentions Midland.
22 They want to draw inferences about what some of
23 the potential reasons for the credit score being
24 too low mean. They didn't take American Express'
11:16:24 25 deposition. They could have done that. The

1 American Express letter says what it says. And
2 Transunion said what they said. And I asked this
3 question of Transunion for a very specific
4 purpose. Because this is very important.

11:16:48 5 Because this is -- the American Express letter is
6 the only document that substantiates an actual
7 denial of credit during the time period that's at
8 issue.

9 What is the impact in terms of credit
10 score on an account being marked as disputed?

11 Answer: It does not get factored into the credit
12 score. Question: And so from early August,

13 2008, through September, 2010, the Midland
14 account would not have been factored into

11:17:20 15 Mr. Brim's credit score? Answer: That is
16 correct.

17 Mr. Brim wasn't denied credit from
18 American Express because of Midland. I don't
19 know why he was denied credit from American
11:17:34 20 Express. Neither do they. Neither does anyone
21 in here. We haven't heard from American Express.

22 The other category of damages that
23 plaintiff is claiming are mental anguish,
24 emotional distress type damages. And make no
11:17:52 25 mistake. We concede this has been an

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1 inconvenience for Mr. Brim.

2 Mr. Bennett said he spent the last two
3 years of his life, trying to fix this? There is
4 something pretty easy he could have done in an
11:18:14 5 afternoon, and that is go to Redstone and get the
6 additional documentation. Even if he didn't know
7 what a transactional detail report meant, even if
8 Redstone -- whoever he talked to at Redstone,
9 even if they didn't know what that term meant,
11:18:28 10 there's no dispute in this case that Mr. Brim
11 knew the bank statement wasn't getting it done.

12 He had given the bank statement to the
13 original creditor on two different occasions, and
14 it didn't get it done. But, yet, he's here,
11:18:46 15 saying, that, well, Midland is the purchaser of
16 that account. Somehow it should be easier for
17 Midland to figure it out from there. That
18 doesn't make sense.

19 But the mental anguish damages that he's
11:18:58 20 claiming, the stress, the worry, the loss of
21 sleep, I have no doubt that that is stressful.
22 All of us face stressors in our life of varying
23 sorts. But another thing that you didn't hear in
24 this case -- and the reason you're going to hear
11:19:16 25 me say what you didn't hear in this case is

1 because the proof is important. The proof is
2 everything here. You didn't hear from any
3 doctor, from any counselor. You didn't even hear
4 from a relative come in here and talk about how
11:19:30 5 they had seen what an impact this had on him.

6 And I'm not suggesting that the notion
7 that he was inconvenienced, that he was stressed
8 out is contrived. He probably was inconvenienced
9 and stressed out, but not to the level that
11:19:48 10 should entitle him to an award of mental anguish
11 damages, especially given that there were things
12 he could have done to avoid this. That's all I'm
13 going to say about damages for right now.

14 I want to talk about the investigation.
11:20:02 15 Because the duty here -- and it's in your jury
16 instructions -- is that we perform a reasonable
17 investigation.

18 I mean, the real reason that we're here on
19 the duty side is to determine whether Midland's
11:20:22 20 investigation of Mr. Brim's disputes was
21 reasonable.

22 Now, it's hard to figure out exactly what
23 the plaintiffs are arguing. On the one hand,
24 they're indicting the entire computer system.
11:20:34 25 And if using a computer system itself is

1 fundamentally flawed, then we've all got much
2 bigger problems than this particular case,
3 because no computer system is going to be perfect
4 in every instance. All computer systems are
11:20:52 5 constantly updated. The algorithms are being
6 perfected. These things evolve.

7 Have you ever seen a software program that
8 works perfectly the first time it's installed? I
9 know every time we get new software at my office,
11:21:10 10 at the law firm, we go through a period of
11 debugging.

12 But computers are important. And they're
13 necessary. And the mere fact that we use
14 computers to process the ACDVs in the first
11:21:22 15 instance does not automatically mean that this is
16 unreasonable.

17 Looking in your jury charges on Page 7 at
18 the top, the judge has instructed you that the
19 term, "negligence," means the failure to do
11:21:48 20 something that a reasonably-prudent entity would
21 do or the doing of something that a
22 reasonably-prudent entity would not do under the
23 circumstances you find existed in this case.

24 What is a furnisher of data supposed to
11:22:04 25 do? What are other people similarly situated to

1 Midland supposed to do? Let's talk about
2 plaintiff's evidence of that issue. There's
3 nothing to talk about. They didn't even ask the
4 CRAs, is this different than other people do it?
11:22:28 5 They didn't ask that question, because they
6 didn't want the answer. They didn't bring
7 another furnisher in here to say the way Midland
8 does it is just way different than everyone else.
9 They didn't bring that type of evidence to you.

11:22:42 10 It's what a reasonably-prudent entity
11 would do under the same circumstances. And I
12 submit to you that when you're receiving 8,000
13 disputes per week electronically that it makes
14 sense for those things to be handled in the first
11:22:58 15 instance by the computer.

16 You also heard testimony from Angelique
17 Ross about the manual reviews that are performed
18 on some of those ACDVs.

19 Now, we're at something of a disadvantage
11:23:14 20 because Angelique can't be here. Trust, me I
21 wish she was. Nothing against Mr. Edrozo. I
22 very much appreciate him being here to represent
23 the company. But there's no getting around the
24 fact that Angelique is the person most
11:23:28 25 knowledgeable about these issues. And the

1 plaintiffs took a very lengthy deposition of her
2 in September in California. You heard probably a
3 lot more of it than you wanted to hear. And
4 Angelique testified that about five percent of
5 these ACDVs are flagged for manual review.

6 And the way that the ACDV interfaces with
7 the system is important. Because the CRA, the
8 consumer reporting agency, they receive
9 Mr. Brim's dispute. They don't just forward
10 whatever documents they get from Midland. They
11 interpret it. They code the ACDV.

12 The ACDV comes into Midland's system.
13 Certain codes on the ACDV side will trigger a
14 manual review. Certain codes on Midland's side
15 will trigger a manual review. About five percent
16 are manually reviewed.

17 That's not all there is to the
18 investigation. You heard a lot of testimony
19 about what happened when Mr. Brim sent his
20 letters directly to Midland.

21 Jason, if you would pull up the first
22 letter.

23 This is not at all insignificant, because
24 the information that Midland receives directly
25 from computers -- excuse me. Receives directly

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1 from consumers is part of the computer system.
2 Because a person -- I know they want to talk
3 about computers. But a person actually has to
4 open the mail. A person has to put that
11:25:08 5 received-by stamp on there. A person has to
6 determine what does this letter say and how are
7 we going to handle it. And the testimony in this
8 case has been that all of that happened.

9 Now, why didn't Midland contact Mr. Brim
11:25:26 10 in response to this letter? We've discussed this
11 several times. But he says, please do not
12 contact me again by phone or in writing. So
13 Midland was a little hamstrung on that.

14 Now, when I write a letter, trying to fix
11:25:44 15 something, I normally say, please contact me if
16 you have any further questions or need further
17 information. That's what most people do. They
18 don't say, fix this, but don't contact me.

19 Go to the March, 2009 letter. Same thing
11:26:10 20 in March, 2009. An actual employee of Midland
21 receives this mail, opens it, processes it, codes
22 it into the system.

23 Now, you may still be wondering why isn't
24 the bank statement itself sufficient? Why can't
11:26:28 25 Midland just accept the bank statement, delete

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1 the account, and move on? Well, what testimony
2 did we hear on that issue? We heard from Dell on
3 that issue. Dell was the original creditor.
4 They couldn't even accept the bank statement as
5 proof of payment because the bank statement
6 didn't give any information other than a payment
7 purported to have been made to Dell.

8 Pull up our consumer relations manual. Go
9 to the second page.

10 The two pages that we have up here -- you
11 just briefly saw the first, and this is the
12 second -- are the pages from Midland's consumer
13 operations manual that talk about how to handle
14 disputes based on prior payment. And Mr. Bennett
15 has suggested that this sets up an impossible
16 situation; that there is absolutely no chance of
17 success because it's either a paid-in-full letter
18 and the front and back of a check or nothing at
19 all. And that's just not the case. The document
20 tells us this.

21 Angelique Ross -- I'm pointing at the
22 witness stand, like she was actually here. It's
23 instinct. You heard her by deposition, though.
24 Angelique Ross said when Midland receives
25 something that purports to be proof of payment,

1 there are three options. Number 1, the proof is
2 deemed invalid; Number 2, the proof is deemed
3 valid; or Number 3 -- and you can see it in the
4 box under Number 5 there -- if unable to
11:28:18 5 determine if proof is valid, account will be
6 referred to ACQ, which is acquisitions.

7 You did hear Mr. Edrozo speak to that very
8 briefly because Mr. Bennett called him for a
9 second time yesterday to extract testimony from
11:28:36 10 him. And the one question I asked Mr. Edrozo was
11 about this issue. Because this is important.
12 This is what you need. This is what shows you
13 that there is a path to success when you're
14 challenging -- when you're challenging a trade
11:28:54 15 line, saying that it's been paid prior. If you
16 send something novel, if you send something that
17 people aren't used to seeing that's on the edge,
18 it gets sent to acquisitions.

19 Angelique Ross testified by deposition
11:29:12 20 that acquisitions is the department that actually
21 reaches out to the original creditor. And in
22 this instance -- I guess we'll never know because
23 we didn't get it. But in this instance, if
24 Mr. Brim had actually sent that additional
11:29:24 25 information that we now know exists from Redstone

1 Federal Credit Union, that would have been sent
2 to Dell or first it would have been sent to
3 acquisitions. Acquisition would have gone to
4 Dell with it. That didn't happen.

11:29:44 5 The other thing worth noting about the
6 computer system -- and then I'm going to leave
7 investigations and I'm going to move on to my
8 next point because I do intend to keep my promise
9 to be shorter than Mr. Bennett -- is this is not
11:30:00 10 a computer system -- this is not software that
11 Midland wrote itself. This is software that
12 Midland purchased from the credit reporting
13 agencies.

14 You heard the term, "E-Oscar," during the
11:30:14 15 trial a time or to two. That's the system that
16 Midland purchased from the credit reporting
17 agencies. This isn't something Midland created.
18 And I think it's safe to assume that the CRAs
19 don't develop a software program for one client.

11:30:36 20 It's not our burden to prove anything in
21 this regard. I submit to you that the reason you
22 didn't hear any testimony on that issue about
23 what other furnishers are using is because
24 they're also using the same system. And if other
11:30:54 25 furnishers are doing it, it's a good indication

1 that it might be reasonable to process ACDVs that
2 way.

3 MR. BENNETT: Judge, I do not want
4 to object during closing. Counsel is arguing
11:31:10 5 facts not in evidence.

6 THE COURT: Sustained. Disregard
7 this last statement that was made by counsel for
8 the defendant.

9 MR. LANGLEY: Let's talk about
11:31:22 10 causation.

11 The best I can tell, the plaintiff's
12 argument about what the investigation should have
13 entailed involves making contact with Dell,
14 making contact with Redstone, making contact with
11:31:42 15 the plaintiff, or making contact with some other
16 undescribed person or entity. So let's address
17 each of those in turn.

18 And this is where the plaintiff's case
19 really breaks down on the law. Both for their
11:32:00 20 negligence claim and for their willfulness claim.
21 Because unless they can show that the result
22 would have been different, then it doesn't
23 matter. Even if you think Midland's system was
24 horrible, it doesn't matter if the results of the
11:32:18 25 investigation would not have been different.

1 So what would have happened if Midland had
2 contacted Dell? We know, from Dell's testimony,
3 that they believed the account was due and
4 payable until August, 2010. Look at the bottom
11:32:38 5 entry first.

6 At the time Dell Financial Services sold
7 Mr. Brim's account to Midland, did Dell Financial
8 Services Believe the account was due and payable?
9 Yes. Sorry. And did Dell Financial Services, in
11:32:50 10 fact, believe the account was due and payable
11 until August of 2010? Answer: Yes, sir. And
12 then the question above that, so if someone had
13 inquired about the status of Mr. Brim's account
14 prior to August of 2010, what would Dell
11:33:04 15 Financial Services' response have been? Answer:
16 That the customer still had a balance on the
17 account and it was still owed. That's what would
18 have happened if Midland had contacted Dell.

19 So what would have happened if Midland had
11:33:20 20 contacted Redstone? Well, you heard from Anthony
21 Cox, 25 years at Redstone Federal Credit Union,
22 who said that if you had contacted us, we
23 wouldn't have talked to you. Mr. Cox also said
24 that had a consumer come in and a customer of the
11:33:42 25 bank come in and said, well, this bank statement

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1 isn't what I need to show the payment, that that
2 person ultimately would have been referred to the
3 ACH automated transactions -- automated
4 operations department.

11:34:02 5 Yesterday, we introduced into evidence
6 another copy of that bank statement, Defendant's
7 Exhibit 24. And I think it's been supplemented
8 in your binders. It is a single page. And it's
9 a copy of the bank statement that Mr. Brim twice
11:34:18 10 sent to Dell in 2005 and that he twice sent to
11 Midland in 2008 and 2009. And at the top of that
12 page, there's handwriting. And we never
13 established precisely what it said, but you're
14 entitled to draw inferences about what that said.
11:34:38 15 You know the first word is automated. I submit
16 to you that the second word is operations.

17 Mr. Cox, when he came in, said that he was
18 the manager of the automated operations
19 department. He actually used those terms. The
11:34:56 20 bank statement that Mr. Brim went and got from
21 Redstone, they may have told him, this is a
22 transactional detail report. We think that's
23 unlikely, given the facts, but let's assume that
24 that actually happened. They wrote that entry on
11:35:10 25 the top of the bank statement for a reason. And

1 it corresponds with some of the testimony that
2 Mr. Brim gave in his deposition that we read into
3 the record yesterday, which is when the bank
4 teller said, if you need anything further, let us
11:35:26 5 know. And for all we know, that never actually
6 happened here.

7 We know that Redstone Federal Credit Union
8 was able to produce the transactional detail
9 report that Dell had been looking for. We know
11:35:44 10 that once that was provided to Dell, that it took
11 less than a day to trace the payment and resolve
12 this issue.

13 All right. So what's the third thing that
14 they suggest Midland should have done to
11:36:02 15 investigate this dispute? We should have
16 contacted Mr. Brim. Well, first of all, he had
17 told us on two different occasions in writing not
18 to contact him. But even if we can look past
19 that, we have to talk about what would have
11:36:18 20 happened had we contacted him.

21 Transactional detail report -- those are
22 not our words. I mean, those aren't words that
23 Midland owns. Those are the words that Dell was
24 using when they were asking Mr. Brim for
11:36:34 25 something other than the bank statement. So

1 Midland wouldn't have said to Mr. Brim, you know,
2 we need a transactional detail report. They
3 would have followed their procedures and said,
4 what we actually need is a settlement in full or
11:36:48 5 paid-in-full letter from the original creditor
6 and the front and back of a check. Mr. Brim
7 probably would have said -- because he had no
8 front and back of a check; this was a phone
9 draft -- but ultimately this leads us back to
11:37:02 10 Dell.

11 And this is why I emphasized at the
12 beginning that the information from the original
13 creditor is critical here. It's case
14 determinative. And ultimately, it was the
11:37:16 15 information from the original creditor that
16 resolved this entire issue.

17 The next category of, I guess, people or
18 entities that the plaintiff seems to be claiming
19 that the defendant should have contacted are
11:37:32 20 undescribed. They say should have contacted
21 Dell. Didn't contact Dell, Redstone, Brim.
22 Didn't contact anybody. Who is that anybody?
23 Who else is it that Midland should have reached
24 out to, assuming they should have reached out to
11:37:46 25 anyone? Who and for what reason? If there's

1 anyone at all that Midland should have gone back
2 to, it's Dell. And we know what would have
3 happened had they gone back to Dell because we
4 have Dell's testimony to tell us that.

11:38:02 5 But let's talk about Dell for just a
6 moment.

7 Bring up the account notes. Bring up
8 Dell's notes. You don't have Dell's notes? All
9 right.

11:38:18 10 This is Defendant's Exhibit 6. It's Page
11 17. On this page, there are two entries from
12 Dell. You heard the Dell representative, Rachel
13 Garlock testify about these yesterday. Two
14 entries from September 8th, 2005. And in the
11:39:10 15 first entry, Mr. Brim had just faxed a copy of
16 his bank statement to Dell. In the very next
17 entry, it says, customer called in. He will go
18 to his bank during lunch to get transactional
19 detail report from his bank.

11:39:24 20 Even if Mr. Brim didn't know what the
21 transactional detail report was, and that's very
22 likely -- we're not suggesting he should have
23 known what it was. What is really beyond
24 reasonable dispute is that he knew he needed
11:39:38 25 something else. And that something else -- if he

1 had gone to Redstone and asked for something
2 else, you heard from Mr. Cox from Redstone
3 Federal Credit Union what would have happened in
4 that instance.

11:39:54 5 Now, one of the disadvantages of being a
6 defendant in a case is that you don't get to
7 argue last because Mr. Bennett will have eight
8 minutes to come back up here and talk to you. So
9 I'm not going to get to respond to what he says.
11:40:14 10 And that puts us at something of a disadvantage.
11 But it's their burden of proof. And so I suppose
12 it's fair that he gets to go last.

13 But I want someone -- I don't know who it
14 is, but I want at least one of you when you're
11:40:28 15 back there in deliberations and there's something
16 that you're thinking about that Mr. Bennett says
17 or Ms. Cauley -- I don't know who's arguing
18 rebuttal -- or Mr. Sykstus. I want one of you to
19 think: What would Midland say about this?

11:40:44 20 As you're examining the proof, please,
21 please ask yourself when you're contemplating an
22 argument or a supposed fact presented by the
23 plaintiff in their rebuttal: What would Midland
24 say about this?

11:41:00 25 We believe that the investigation in this

1 case, under the circumstances, given the amount
2 of disputes that we receive, was reasonable. We
3 believe that the method of processing direct
4 disputes was reasonable.

11:41:14 5 Even if you don't think it was reasonable,
6 the plaintiff certainly hasn't presented evidence
7 to demonstrate that it rises to the level of
8 willfulness, some kind of reckless disregard for
9 the rights of the plaintiff.

11:41:28 10 But even if you think that, where
11 everything comes off track for the plaintiff is
12 on the causation issue. And you'll see in your
13 jury instructions, under both negligence and the
14 willfulness claims, there's no mistaking that
11:41:42 15 they have to prove causation. Proximate cause.
16 And in this case, they cannot and did not prove
17 that the results would have been different had
18 Midland done a different type of investigation.

19 So I'm going to ask you when you go back
11:42:00 20 there to deliberate to return a verdict for
21 defendant, Midland Credit Management. Thank you.

22 MR. BENNETT: I'm confident I
23 don't have eight minutes.

24 THE COURT: You have five.

11:42:18 25 MR. BENNETT: Thank you, Judge.

1 Let me just talk briefly about one
2 overarching disagreement that we have in the two
3 sides.

4 The defendant is operating under this view
11:42:32 5 that it is entitled in the law or in fairness or
6 for some other reason besides internal procedures
7 to rely on Dell. Dell is the ultimate,
8 omniscient source of knowledge. And we know the
9 reality is that's not true. The problem is Dell
11:42:52 10 didn't want to pull its IEnnergizer to make it get
11 its own transactional detail report.

12 When the defendant is saying, what more
13 could we do, it is not saying, what more could we
14 investigate. What it's saying is we don't have
11:43:06 15 anymore means than you do to convince Dell to
16 change its opinion. We, Midland, we're not going
17 to be anymore effective in convincing Dell that
18 it's paid. But that's not what the FCRA says.

19 And let's talk about if the business model
11:43:22 20 cannot accommodate a detailed inquiry -- for
21 example, Midland sending someone to Texas, Dell
22 flying someone to India and getting to the bottom
23 of this, putting a special Midland agent on it.
24 Right? Expensive, difficult, not worthy of the
11:43:40 25 70-dollar account.

1 But it wants my client to do -- not quite
2 go to India, but wants him to do all that.
3 Midland doesn't have to. Just delete the
4 account. Because there are three possibilities.
11:43:54 5 We know that it is owed; we know it's not owed;
6 and we just aren't sure. And the law doesn't
7 allow Midland to presume my client saying I paid
8 it is any more credible than Dell, a stranger to
9 it technically, telling it it hasn't been paid.
11:44:16 10 Why is Midland entitled to rely on Dell and
11 completely disregard my client? And they can't.
12 They can't.

13 Credit denial depositions, most of them
14 are on line. They're automated. And you have --
11:44:32 15 through great effort in this litigation, we were
16 able to wrench a credit denial letter from
17 American Express and after noticing a deposition
18 to get the affidavit. And even that's
19 challenged. But there's no evidence of any
11:44:46 20 alternate explanation. And you have my client
21 apply. The denial for -- the inquiries were for
22 mortgages that he didn't get. Circumstantial
23 evidence instruction is there for a reason.

24 Now, at the end of this, remember one last
11:45:00 25 thing. Mr. Langley says computers are imperfect.

1 They're evolving all the time. You have to debug
2 them. Work them out. Well, have they? No.
3 There's no evidence that any procedures were
4 changed; that if my client or his neighbor or
11:45:20 5 anyone else in Alabama or anyone else in the
6 country went through the same process today it
7 would happen all the same.

8 And that is why punitive damages are
9 there. To deter companies from doing this same
11:45:36 10 thing again and again and again. It doesn't have
11 to be malicious, mean. It could just be
12 reckless.

13 300 million dollars is what their annual
14 report says. In excess of that. That's a lot of
11:45:48 15 money. How do you make a 300-million-dollar
16 company change its procedures? And obviously,
17 suing them a year and whatever later isn't
18 enough.

19 And that's where you come in. Not for
11:46:02 20 Mr. Brim. That's not what punitive damages are
21 for. You need to make sure that it doesn't
22 happen in Alabama; doesn't happen in Virginia;
23 doesn't happen in California or anywhere in the
24 country this federal law governs. It's why the
11:46:16 25 law has been there 30-something years.

1 We don't just need your help. Other
2 consumers need your help. Make this policy
3 different. If they don't want to do the detailed
4 investigation, don't do it. But you can't keep
11:46:30 5 reporting it as verified, definitely owed.

6 Thank you for your time.

7 THE COURT: You will have one
8 verdict form with you. It has different lines on
9 it. And I'd just like to read it to you. And
11:46:44 10 the reason you only have one is because you only
11 return one verdict.

12 On the claim of plaintiff against the
13 defendant for violation of the Fair Credit
14 Reporting Act, we, the undersigned jurors, find
11:46:54 15 in favor of -- and there's a line for the
16 plaintiff and there's a line for the defendant.
17 And you would mark the one with an X, whoever you
18 find in favor of.

19 The following paragraphs should only be
11:47:10 20 completed if you find in favor of the plaintiff.

21 The next paragraph simply says,
22 plaintiff's claim on negligence, noncompliance,
23 we, the undersigned jurors, assess actual damages
24 of plaintiff at -- and there's a blank line for
11:47:26 25 negligence, noncompliance with the act. And you

1 would fill in the amount of actual damages that
2 you arrive at.

3 And B, plaintiff's claim for willful
4 noncompliance -- there is a form that says, we,
11:47:36 5 the undersigned jurors, assess actual damages for
6 plaintiff at blank. And you would fill in the
7 amount of actual damages or damages of not less
8 than 100, no more than \$1,000 for willful
9 noncompliance with the act.

11:47:52 10 And Two, we, the undersigned jurors,
11 assess punitive damages in the amount of blank.
12 And you would fill in that blank if you award it.

13 And then the foreperson that you pick
14 should sign it and date it. And then that would
11:48:06 15 be the form that you would return to me.

16 Now, I want to just tell you you will have
17 all the exhibits with you in the jury room that
18 have been admitted in the two books. And you
19 will have the stipulated facts with you. You
11:48:20 20 will have your jury charges. You can take your
21 notes with you. You will have lunch brought to
22 you. And I think you've already ordered those?
23 Okay. Will they be delivered?

24 COURTROOM DEPUTY: They should be
11:48:30 25 here at 12:00.

1 THE COURT: Okay. As long as you
2 stay together, you can deliberate. If you
3 separate, like, if you want a break and just get
4 away and get a soft drink or walk across the
11:48:44 5 street and get a cup of coffee or whatever, you
6 have to come into court and tell me you want a
7 break. And then while you're on break, you can't
8 obviously talk about the case. But as long as
9 you're together, all 12 of you, you can start
11:48:56 10 your deliberations. And I'm going to tell you
11 that you can do that now.

12 So here's the verdict form. And just let
13 Tammi help you upstairs. And we'll go from
14 there. We'll be here, waiting on you.

11:49:08 15 If you have a question about anything, you
16 would need to reduce it to writing and all come
17 into the court and ask me the question so I can
18 look at it. Or you can give it to Tammi and she
19 can bring it to me. And then I'll take it up
11:49:20 20 with the lawyers and bring you back into the
21 courtroom. Okay? All right.

22 (Jury excused.)

23 (In open court. Jury not
24 present.)

11:50:18 25 THE COURT: All right. Guys and

1 girls, are y'all going to lunch? If you are, I
2 need your cell numbers. Just one cell number per
3 side. Are y'all going to lunch?

4 MR. LANGLEY: I think we are going
11:50:52 5 to go get a bite. We'll be nearby.

6 THE COURT: An hour?

7 MR. BENNETT: We're going to try
8 to get the case settled.

9 THE COURT: You do what you want
11:51:04 10 to. No skin off my nose.

11 MR. BENNETT: We have been trying.
12 Both sides.

13 THE COURT: Take an hour.

14 (Luncheon recess.)

16:54:34 15 (In open court. Jury present.)

16 THE COURT: Please be seated
17 everyone. Let the record show that the jury has
18 returned to the courtroom. And Mr. Bess, I see
19 you have some white paper in your hand.

16:55:10 20 JUROR 2: Yes, ma'am.

21 THE COURT: Has the jury reached a
22 verdict?

23 JUROR 2: Yes, Your Honor.

24 THE COURT: Are you the foreperson
16:55:16 25 of the jury?

CHERYL K. POWELL, CCR, RPR, FCRR

Federal Official Court Reporter

1729 Fifth Avenue, North

Birmingham, AL 35203

256-508-4050/wrd4wrdrpr@aol.com

1 JUROR 2: Yes, Your Honor.

2 THE COURT: Would you please hand
3 it to Tammi, my courtroom deputy?

4 (Juror complies.)

16:55:28 5 THE COURT: Is this your verdict:
6 On the plaintiff's claim against defendant for
7 violation of the Fair Credit Reporting Act, we,
8 the undersigned jurors, find in favor of the
9 plaintiff.

16:55:42 10 Further, we, the undersigned jurors,
11 assess the actual damages -- well, excuse me.

12 On the plaintiff's claim of willful
13 noncompliance, we, the undersigned jurors, assess
14 actual damages of the plaintiff at \$100,000.

16:56:00 15 Two, we, the undersigned jurors, assess
16 punitive damages in the amount of \$623,180.

17 All right.

18 And it's signed by you, Mr. Bess.

19 And is there anyone who wants the jury
16:56:16 20 polled?

21 MR. LANGLEY: Your Honor, we would
22 like the jury polled.

23 THE COURT: Okay. Would you
24 please poll the jury?

16:56:22 25 And I want the parties to know that there

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1 was nothing on the plaintiff's claim on
2 negligence.

3 MR. BENNETT: Yes, Your Honor.

4 COURTROOM DEPUTY: If this is your
16:56:30 5 true verdict, answer yes. If it is not, answer
6 no.

7 Phillip Bess?

8 JUROR 2: Yes.

9 COURTROOM DEPUTY: Jeffrey Bibbee?

10 JUROR 5: Yes.

11 COURTROOM DEPUTY: Melissa

12 Dobbins?

13 JUROR 10: Yes.

14 COURTROOM DEPUTY: Stephen

15 Drzycimski?

16 JUROR 12: Yes.

17 COURTROOM DEPUTY: Monica Gregory?

18 JUROR 16: Yes.

19 COURTROOM DEPUTY: Charles Hines?

16:56:38 20 JUROR 19: Yes.

21 COURTROOM DEPUTY: Chris Matthews?

22 JUROR 24: Yes.

23 COURTROOM DEPUTY: Carl McGrady?

24 JUROR 25: Yes.

16:56:44 25 COURTROOM DEPUTY: Donna

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256-508-4050/wrd4wrdpr@aol.com

1 Missildine?

2 JUROR 27: Yes.

3 COURTROOM DEPUTY: Deborah Moody?

4 JUROR 29: Yes.

16:56:48 5 COURTROOM DEPUTY: Stacey Moseley?

6 JUROR 31: Yes.

7 COURTROOM DEPUTY: Jane Wylie?

8 JUROR 40: Yes.

9 COURTROOM DEPUTY: Thank you.

16:56:54 10 THE COURT: All right. In
11 accordance with the verdict of the jury, judgment
12 is rendered in favor of the plaintiff, Jamon
13 Brim, and against Midland Credit Management,
14 Inc., on the plaintiff's claim of willful
16:57:08 15 noncompliance in the amount of \$100,000 actual
16 damages and \$623,180 punitive damages.

17 And I'm going to get Tammi to make copies
18 of the verdict for you. But first of all, I
19 would really like to thank you for your -- first
16:57:22 20 of all, for putting up with me being sick. I'm
21 sorry about that. I appreciate that. I mean, I
22 had to recess early. And I've not been in the
23 best of shape. But I appreciate y'all putting up
24 with it.

16:57:38 25 I thank you for your kindness and your

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1 attention. There's a lot put at you in this
2 week. There was a lot of numbers and a lot of
3 interesting issues. And I just want to tell you
4 thank you for being here. We can't work without
16:57:52 5 you.

6 And every time I try a jury case, I am so
7 impressed with what 12 people can come up with.
8 I mean, that is a great system, and you proved
9 it. It is a great system. And we're one of the
16:58:06 10 few countries in the world that has that system.

11 I used to practice law in Denmark where
12 I'm from originally. They don't have the jury
13 system like we have here in the United States.
14 And it is a totally different form of
16:58:18 15 administration of justice. And I am much more
16 impressed with what we have in this country.

17 So thank you so much. I hope you'll have
18 a lovely weekend and a good spring.

19 And we have a rule in federal court that
16:58:34 20 you're free to discuss your experience as a juror
21 if you want to. You don't have to. But you
22 can't do it until 24 hours after the term is --
23 is it 24 or 48?

24 COURTROOM DEPUTY: 48.

16:58:48 25 THE COURT: 48 hours after the

1 term is over. So it's over today. But that
2 means if you should get any calls about
3 anything -- first of all, you should know that
4 you do not have to answer any questions.

16:58:58 5 Secondly, you should know that you can't, even if
6 you choose to answer questions -- you can't do it
7 until 48 hours after this minute. Okay?

8 Have a nice weekend and thank you. Make
9 sure to get all your excuses from work and all
16:59:10 10 that stuff.

11 Y'all just have to wait a minute if you
12 want a copy of the verdict. Thank you. Thank
13 you so much.

14 (Jury excused.)

17:13:00 15 (The Proceedings were concluded at
16 approximately 5:13 p.m. on February 25, 2011.)

C E R T I F I C A T E

I, the undersigned, hereby certify that the foregoing pages contain a true and correct transcript of the aforementioned proceedings as is hereinabove set out, as the same was taken down by me in stenotype and later transcribed utilizing computer-aided transcription.

This is the 17th day of March of 2011.

Cheryl K Powell

Cheryl Renae King Powell, CCR, RPR, FCRR
Federal Certified Realtime Reporter

CHERYL K. POWELL, CCR, RPR, FCRR
Federal Official Court Reporter
1729 Fifth Avenue, North
Birmingham, AL 35203
256-508-4050/wrd4wrdpr@aol.com